TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, PLAINTIFF IN ERROR,

vs.

THE DELTA AND PINE LAND COMPANY, THOMAS WATSON, AND WILLIAM WATSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED JUNE 2, 1896.

(16,316.)

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1 STATE OF MISSISSIPPI:

Supreme Court, October Term, A. D. 1894.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the second Monday, the 8th day, of October, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Tim. E. Cooper, chief justice, and the Honorable Thomas H. Woods and the Honorable Albert H. Whitfield, associate justices; also Oliver Clifton, clerk of said court, in person and by his deputy, C. C. Campbell; Thomas J. Wharton, marshal, and Thomas Grant, porter.

On the 22nd day of September, A. D. 1894, a record was filed and docketed in said supreme court in words and figures following, to wit:

2 STATE OF MISSISSIPPI, }
Sunflower County, }

Regular December Term, 1893.

Be it remembered that on Monday, the 11th day of December, 1893, the honorable chancery court of Sunflower county and State of Mississippi was begun and held at the court-house, in the town of Indianola, the county-seat of said county, the same being the time and place appointed by law for holding said court—there being then and there present J. Y. Walton, clerk of said court, and A. E. Anderson, Jr., sheriff of said county; the Honorable W. R. Trigg, chancellor of the 7th district of said State for chancery courts—when *when* the following proceedings were had, to wit:

LEANDER C. GOODSELL
vs.
DELTA AND PINE LAND COMPANY *et al.* } 543.

Original Bill.

"In the Chancery Court of Sunflower County."

LEANDER C. GODSELL
vs.
DELTA AND PINE LAND COMPANY.

LEANDER C. GO-DSELL, a Citizen of the State of Iowa, Complainant,
vs.
THE DELTA AND PINE LAND COMPANY, a Corporation of the State of Mississippi; William Watson, a Citizen of the State of Mississippi, Resident in Harrison County, Individually and as Secretary of the said Company; Thomas Watson, a Citizen of the State of Illinois, Resident in the City of Chicago; Byron H. Evers, George F. Phillips, and William Marshall, Subjects of Her Majesty Queen Victoria, Residents of the City of London, Defendants.

To the honorable the said chancery court:

Your orator, the said Go-dsell, respectfully shows and states to your honor as follows:

1st. On the 8th day of Nov., 1881, Byron H. Evers, of the city of London, England, was the owner of all of those lands in the
3 county of Sunflower described and set forth in schedule marked "A" to this bill; and, being such owner, he did, on the day and date aforesaid, sell and convey an undivided one-fourth interest therein to Matthew S. Baldwin, by their indenture of that date duly signed, sealed, and proven and delivered to the said Baldwin, a copy of which said indenture is herewith filed, marked Ex. "B," and prayed to be taken — a part of this bill. The said indenture was recorded in the county of Sunflower on the 20th day of Nov., 1882.

2nd. On the 7th day of Oct., 1885, the said Matthew Baldwin, for the consideration of three thousand dollars, sold and conveyed to your orator all his right, title, and interest in and to all of said lands situated in said Sunflower county and included in said schedule. The instrument conveying to your orator said interest in said lands was duly signed and acknowledged on the date of its execution and recorded in the county of Sunflower on the first day of December, 1885, and is herewith filed and marked Exhibit C, and prayed to be taken as a part of this bill.

3. All of said lands and of divers and sundry lands situated in other counties of the Mississippi-Yazoo delta were purchased by the said Byron H. Evers from one said E. C. Gordon, who purchased the same from Hemingway and Gibbs, auditor and treasurer and *ex*

officio levee commissioners and commissioners for the chancery court of the first district of Hinds county, in the case of Joshua Green *vs.* said Hemingway and Gibbs. Said land- were sold under decree of said court and the title thus derived by said Gordon and sold and conveyed to said Evers was paramount.

4th. In order to effectuate and complete said purchase the said Evers borrowed the money necessary for that purpose from the defendant Thomas Watson, and thereafter the said Thomas Watson, claiming to be the owner thereof because of the interest of the money in the purchase thereof, on the — day of July, 1884, filed his bill in the district court of the United States for the northern district of Mississippi, sitting as a court of equity, to establish and enforce said trust, therein stating himself to be a citizen of the State of
4 Illinois, resident in the city of Chicago, against the said Byron H. Evers, George F. Phillips, and William Marshall, subjects of her majesty Queen Victoria, of England, and the said M. S. Baldwin, then a citizen of the State of Illinois, resident in Chicago, and so charged in the said bill to be, and others whose names are not necessary here to mention. Such proceedings were had in the case that, on the — day of ——, 1884, James D. Stewart was appointed receiver, to take charge of the lands in controversy in said pretended cause, including not only the lands purchased by Evers from said Gordon, and situated in the Yazoo delta, but other lands lying in what is known as the pine region of Mississippi. By the decree appointing the said James D. Stewart receiver he was ordered to take charge of the said lands and redeem them from a tax sale made to the State of Mississippi in 1883 for the taxes due thereon and unpaid. Said receiver was directed to redeem and hold said lands for account of whom it may concern in the pending litigation, but not independently thereof, or to acquire a distinct title thereto. Such redemption or purchase was effected under the provisions of an act of the legislature of this State approved M'ch 14th, 1884, and entitled "An act for the benefit of purchasers of levee lands sold under the decree of the chancery court of Hinds county, first district, in the case of Joshua Green and others against Hemingway and Gibbs, auditor and treasurer and *ex officio* liquidating levee commissioners." Session Act 7, p. 182.

5th. On the 31st day of July, 1885, there was entered a pretended decree in said cause of an interlocutory nature to settle the rights of the parties, a copy of which is herewith filed, marked Ex. "D," and prayed to be taken as a part of this bill.

By the third paragraph of said pretended decree all bargains or sales of any kind by and between the parties subsequent to the said purchase of the delta lands by said Evers and prior to a certain December agreement between them were vacated, set aside, and for nothing held, saving to all persons not party to the cause all
5 rights acquired and held under the parties to the suit. Said decree stipulates that the complainant by consent of parties stood in the attitude of a lien creditor or mortgagee, with the right of satisfaction and payment of all monies advanced by him toward

the purchase of the said delta lands and the parties to the said litigation agreed away thereby.

By the last clause of said pretended interlocutory decree the legal and equitable titles of all the parties to the suit in and to all the pine and delta lands included therein, except those claimed and held by N. T. Burroughs, were divested out of the parties and vested in the said James D. Stewart, receiver in the cause, and such titles were to be held by him subject to the order of the court.

6th. On the third day of October, 1885, there was a pretended final decree in said cause fixing, according to the agreement of parties, the lien of said Thomas Watson upon the said delta and other lands to be the sum of $145,500, and ordering and directing a sale thereof at the door of the United States court-house at Jackson, in the southern district of Mississippi, a copy of which said pretended decree is filed herewith, marked Exhibit "E," and prayed to be taken as a part of this bill. The money so stipulated to be due the said Thomas Watson not being paid in accordance with said pretended decree, the lands were so sold and the said Thomas Watson became the purchaser, and a deed was made to him by the commissioners named in said pretended decree and by the said Stewart, receiver, purporting to convey the lands so sold. He afterwards, for the consideration of stock in said company organized by him and defendant William Watson, sold and conveyed the said lands to the said Delta and Pine Land Company, who have since disposed of a large quantity thereof and received therefrom, as your orator is informed, believes, and charges, money sufficient to pay off and discharge the sum agreed to be due, as aforesaid, and decreed in favor of said Thomas Watson in and by the terms of said final decree. The residue of said lands, including large quantities situated in the delta and elsewhere, in which the defendants Evers, Phillips, and Marshall are interested, are held and claimed by the said
6 Delta and Pine Land Company under the pretended title heretofore stated. The said pretended final decree was rendered at what was said to be the special Aug. term of the said district court of the United States for the western division of the northern district of Mississippi, which term was not authorized by law to be held, and the said district court then had no jurisdiction of the cause.

7th. It was objected at the institution of said suit, by demurrer, that the said district court of the United States for the northern district of Mississippi was wholly without jurisdiction to hear and determine the same because of the fact that the complainant, Thomas Watson, and one of the defendants therein, Mathew S. Baldwin, were both, as shown on the face of the bill, citizens of the State of Illinois, residents in the city of Chicago, and were each necessary parties thereto; but the objections was overruled and the said court, without warrant of law, maintained its pretended jurisdiction of the case and unlawfully proceeded to decide and determine the rights of the parties just as if it did have such jurisdiction.

8. Your orator is advised, believes, and charges that the said district court of the United States for the western division of the north-

ern district of Mississippi was wholly without any jurisdiction whatever to maintain the said bill and to proceed therein to render any decree, and that, being without jurisdiction, all its orders and decrees after filing said bill were *coram non judice*; nevertheless your orator has no disposition to interfere with the compromise agreement reached by the parties during said litigation as to the amount of money due the complainant, Thomas Watson, for his advances of purchase-money and interest in the land in controversy, nor any agreement that may have been made by and between them in the adjustment of their rights, the one against the other, and which, independent of said suit, could have been made. Your orator, however, insists that his rights, acquire- from the said Baldwin
7 under the conveyance, Exhibit "E," are not at all affected by the said judicial proceedings and decrees, nor was the title of the said Bandwin lawfully ousted out of him and vested in the said receiver, even had the parties consented to the proceedings and decrees in said cause.

10th. Your orator is advised, believes, and charges that the said Delta and Pine Land Company is affected with full notice of the matters heretofore stated, and it and the said Thomas Watson cannot assert against your orator title under the said proceeding, and in this court can stand in no higher and better position than as equitable mortgagees of the said lands, and are entitled only to have a return made to them of the said $145,500, with interest at 6%, and to have the lands included in said litigation subjected to sale to pay it. On account of this debt the said Thomas Watson received some twenty-two thousand dollars from the said Phillips and Marshall, and have sold and disposed of quite a quantity of said land, the title ti which was falsely claimed to have been acquired under the said proceeding in said district court of the United States, and has received from the sale thereof an amount to pay off and discharge the entire debt due them as aforesaid.

11. Your orator is not informed as to the lands claimed under said supposed decree by the said Delta and Pine Land Company or by the said Watson, nor of the said lands sold and disposed of by them since they have falsely asserted title thereto, and are unable to state the facts necessary to complete a final adjustment between the parties, but pray discovery thereof.

12. Your orator now offers to ratify such sale of lands as may have heretofore *have* been made, so as not, however, to interfere with or disturb his rights to have the proceeds of sale applied to the payment of debt due the said Thomas Watson, inasmuch as the lien thereon existed by agreement and contract of parties in his favor. If such offer is to be taken and held to interfere with his rights herein asserted, he will not stand upon or adhere to it, but will insist upon his strict legal rights in the premises.

8 13. Your said orator has been informed, believes, and states that the said Evers, Phillips, and Marshall executed quitclaim deeds to said Thomas Watson to their interest in the lands aforesaid, but insist that said quitclaims were falsely and fraudulently procured, and are not supported by any consideration,

good or valuable, in law. They own all the pine lands involved in said pretended suit, and the said Thomas Watson really had no interest or claim to them of any kind, as he and the said Delta and Pine Land Company have since distinctly averred and proven. The interest of the said Phillips, Marshall, and Evers in the said delta lands did not extend beyond, if it equaled, three-fourths thereof. As to this your orator has no knowledge or information. All of the lands in said controversy are now and have always been wild and unoccupied. Your orator was not a party to the said cause of Watson *vs.* Evers and others, first above referred to.

The premises considered, your orator prays that the parties named in the caption of this bill be made defendant hereto and compelled to answer, &c; that the said Thomas Watson and the said Delta and Pine Land Company exhibit with their answer to this bill a schedule of all the lands claimed to have been purchased by them under the final decree in said cause, and all the land since sold and disposed of by them and the amount received therefor, and all sums of money otherwise received from the said lands, or from the said Phillips and Marshall or either of them, and the quantity of land still claimed by them, and where situated; that on the final hearing the said Delta and Pine Land Company and the said Thomas Watson be decreed to be without title or right to the said lands beyond that of mortgagees to secure the payment of money admitted to be due the said Watson by the parties to said controversy in said district court of the United States; that an account on equitable principles be taken and stated between the parties in the premises, showing the balance due, if any, and for the residue left unpaid, if there be such residue, that a decree be entered directing the sale of all other the delta and pine
9 lands upon which in said cause it was by the parties agreed that the said Watson had a lien as aforesaid, first subjecting to sale all lands, lying without the county of Sunflower which said other lands your orator is informed, believes, and charges will more than suffice to pay any balance due and owing to the said Watson and the said Delta and Pine Land Company, his said assignees; and if it shall appear on the coming in of the report of sale that the balance of the debt due to the said Thomas Watson has been paid off and discharged, then your orator prays that the said lands in the county of Sunflower remaining undisposed of shall be partitioned between your orator and Byron H. Evers, George F. Phillips, and William Marshall, allotting to your orator an undivided one-fourth interest, as aforesaid, or if mistaken in the relief sought, then for such other relief as your orator may be entitled to receive.

NUGENT AND McWILLIE.

STATE OF MISSISSIPPI, }
Hinds County. }

Personally appeared before me, clerk of the chancery court, Thomas A. McWillie, who, being sworn, says that the residence of the defendants Phillips, Marshall, and Evers is in London, England,

as he has been informed, and that J. L. McCaskill, Esq., of Brandon, is their att'y; that Thomas Watson's resident is Chicago, his present post-office address being unknown to affiant.

T. A. McWILLIE.

Sworn to and subscribed before me this the 27th day of March, A. D. 1893.

W. W. DOWNING, *Clerk.*

10 EXHIBIT "A."

Phelps and Marshall.

	S.	T.	R.	Acres.
N. ½ & S. W. ¼ of S. E. ¼	1	22	4	422
N. ½ & S. W. ¼ & S. E. ¼ & N. W. ¼ of S. E. ¼	2	"	"	628
All	3	"	"	670
All	5	"	"	671
All	6	"	"	620
Lots 1 to 10, incl.	7	"	"	368
W. ½ & S. E. ¼ & S. W. ¼ of N. E. ¼ & S. E. ¼ of N. W. ¼	8	"	"	610
All	9	"	"	650
W. ½ of N. E. ¼	10	"	"	484
E. ½	12	"	"	323
E. ½ & S. W. ¼ & E. ½ of N. W. ¼ & S. W. ¼ of N. W. ¼	13	"	"	601
E. ½ of N. W. ¼	15	"	"	81
Lots 1, 2, 3, 4, 6, 7, 8, 9	17	"	"	348
Lots 1 and 11	18	"	"	85
Lot 13	19	"	"	37
E. ½ of S. E. ¼	23	"	"	80
W. ½ & N. E. ¼ & W. ½ of S. E. ¼	24	"	"	561
N. ½ & N. ½ of S. ½ & S. ½ of S. W. ¼	25	"	"	564
S. E. ¼ of S. W. ¼ & S. ½ of S. E. ¼ & E. ½ of N. E. ¼	26	"	"	202
Lots 13 & 14 & 4 & 5, 8 & 10	30	"	"	122
Lots 10, 11 & 13	32	"	"	160
E. ½ of N. E. ¼ & S. E. ¼ & E. ½ of S. W. ¼	31	"	"	304
Total				8,803

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
Sunflower County—Cont'd.				
Phelps & Marshall.				
All	1	22	3	673
All	2	"	"	671
"	3	"	"	674
"	4	"	"	673
"	5	"	"	670
All	6	"	"	670
11 All	7	22	3	641
N. E. ¼ & S. W. ¼ & W. ½ of S. E. ¼ & S. E. ¼ of S. E. ¼ & N. W. ¼ of N. W. ¼	8	"	"	483
All	9	"	"	644
"	10	"	"	645
"	11	"	"	645
"	12	"	"	643
N. W. ¼ & N. ½ of S. W. ¼ & E. ½ of N. E. ¼ & W. ½ of E. ½	13	"	"	684
All	14	"	"	646
W. ½ & E. ½ of S. E. ¼	15	"	"	400
All	17	"	"	642
"	18	"	"	639
W. ½ and N. E. ¼ & S. E. ¼	20	"	"	658
N. ½ & S. W. ¼ of S. E. ¼ & N. ½ of S. E. ¼	21	"	"	
S. E. ¼ of S. E. ¼ and S. W. ¼ of S. W. ¼	21	"	"	526
N. ½ & S. E. ¼ of S. E. ¼	22	"	"	361
All	23	"	"	645
N. W. ¼ & N. ½ of E. ½ & E. ½ of N. E. ¼	24	"	"	399
S. ½ & S. ½ of N. ½	25	"	"	479
N. W. ¼ & N. ½ of S. E. ¼ & S. ½ of N. E. ¼	27	"	"	322
All	26	"	"	648
S. ½ & S. ½ of N. ½ & N. W. ¼ of N. W. ¼	28	"	"	524
All	29	"	"	646
N. ½ of N. W. ¼	30	"	"	81
All	32	"	"	647
N. ½ & W. ½ of S. W. ¼ & W. ½ of S. E. ¼ and E. ½ of N. W. ¼	33	"	"	563
All	35	"	"	641
"	36	"	"	640
				18,314

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
S. ½ and S. ½ of N. ½	4	21	4	478
N. ½ of N. W. ¼ & E. ½ of N. E.	13	"	"	158
N. E. ¼ & S. ½ of N. W. ¼ & S. ½ of N. E. ¼ & S. W. ¼	14	"	"	484
All	19	"	"	614
12 N. ½ & N. E. ¼ of N. E. ¼	20	21	4	361
N. W. ¼ of S. W. ¼	23	"	"	40
S. ½ & ½ int. in N. E. ¼ & E. ½ of N. W. ¼	25	"	"	437
S. ½ & S. ½ of N. W. ¼ & N. E. ¼ of N. W. ¼	26	"	"	442
S. E. ¼	27	"	"	160
All	29	"	"	642
All	30	"	"	644
All	35	"	"	634
All	36	"	"	627
Total				5,751
S. W. ¼	35	20	5	160
All	1	21	3	673
All	2	"	"	666
N. ½ and S. E. ¼	3	"	"	504
N. E. ¼ & S. W. ¼ & N. W. ¼ of S. E. ¼	4	"	"	378
E. ½ & S. E. ¼ & S. W. ¼ of S. E. ¼ & S. ½ of S. W. ¼	5	"	"	207
Lots 1 to 8 & 10 to 14, incl., & lot 16	7	"	"	515
W. ½ & E. ½ of E. ½	8	"	"	492
W. ½ & S. E. ¼ & S. W. ¼ of N. E. ¼	9	"	"	522
N. ½	11	"	"	322
All	12	"	"	644
N. ½	13	"	"	318
Lot No. 10	19	"	"	44
E. ½	20	"	"	322
W. ½	21	"	"	323
N. E. ¼	23	"	"	162
All	25	"	"	632
E. ½ & S. W. ¼ & S. ½ of N. W. ¼	26	"	"	559
Lots 1 to 10, incl., & 15 & 16	29	"	"	440
Lot 12	30	"	"	33
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, & 12	32	"	"	451
13 N. ½	35	21	3	323
N. ½	36	"	"	320
Total				8,850

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
N. W. ¼ & S. ½ of S. W. ¼	25	20	4	236
E. ½ of N. E. ¼	26	"	"	80
W. ½ of S. W. ¼ & E. ½ of S. W. ¼ & W. ½ of N. E. ¼ and N.W. ¼	27	"	"	400
N. ½ & E. ½ of S. E. ¼ & N. W. ¼ of S. E. ¼ & W. ½ of N. W. ¼ of S.W. ¼ & S. W. ¼ of S. W. ¼	28	"	"	521
N. ½ & S. W. ¼ & N. ½ of S. E. ¼ & S. W. ¼ of S. E. ¼	29	"	"	605
N. ½ of S. ½	30	"	"	160
N. E. ¼ of N. E. ¼ & S. W. ¼ of S. E. ¼	33	"	"	80
N. W. ¼ & S. E. ¼	34	"	"	320
E. ½ & S. W. ¼ & E. ½ of N. W. ¼	35	"	"	579
Lots 7, 8, 10, & 12, 11 & 9	36	"	"	381
Total				3,362
S. ½	1	20	3	286
S. ½	2	"	"	288
S. W. ¼ & S. E. ¼	3	"	"	293
All	21	"	"	645
All	22	"	"	639
E. ½ & N. W. ¼	24	"	"	474
S. ½	25	"	"	318
All	26	"	"	646
All	27	"	"	647
All	28	"	"	639
E. ½ of E. ½	32	"	"	161
S. ½ and N. W. ¼	33	"	"	482
S. E. ¼ & S. W. ¼ & N. ½	34	"	"	643
All	35	"	"	642
All	36	"	"	639
Total				7,442
14 W. ½ & N. E. ¼	19	19	5	406
N. E. ¼ and all W. ½ of N.W. ¼, S. C. B. L.	21	"	"	
All S. E. ¼, S. C. B. L.	21	"	"	
S. W. ¼	21	"	"	461
All	22	"	"	647
S. ½	23	"	"	321
All	24	"	"	638
N. ½ and N. ½ of S. ½	25	"	"	472
All	26	"	"	633

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
N. E. ¼ & E. ½ of N. W. ¼ & all S. E. ¼ N. of C. B. L., all of S. E. ¼ S. C. B. L., and E. ½ of E. ½ of S. W. ¼ & W. ½ of W. ½ of S. W. ¼	27	19	5	480
E. ½ of S. E. ¼ of N. W. ¼ of S. E. ¼ & S. ½ of N. E. ¼ & N. W. ¼ of N. E. ¼ & E. ½ of N. W. ¼ & N. W. ¼ of S. W. ¼	28	"	"	356
Lots 3 & 4 & 1 & 2	30	"	"	265
E. ½ of N. W. ¼ & N. W. ¼ of S. W. ¼ and N. W. ¼ of N. E. ¼	34	"	"	
N. W. ¼ of N. E. ¼	34	"	"	161
Total				4,840
All	9	19	3	646
All	10	"	"	641
All	11	"	"	651
All	12	"	"	650
All	13	"	"	638
All	14	"	"	643
All	15	"	"	647
All	17	"	"	656
E. ½ & N. W. ¼ & S. W. ¼	21	"	"	416
Lots 1 to 8, incl., & 12 & 15	22	"	"	457
Lots 4 to 14, incl.	23	"	"	618
Lots 1 to 16, all	24	"	"	652
N. E. ¼ & E. ½ of N. W. ¼ & S. ½ & N. W. ¼ of N. W. ¼ & S. W. ¼ of N. W. ¼	25	"	"	588
All	26	"	"	613
All	27	"	"	641
15 Lots 1, 4 to 16, incl.	28	19	3	497
N. E. ¼ & E. ½ of N. W. ¼	35	"	"	242
N. ½ & S. E. ¼ & E. ½ of S. W. ¼	36	"	"	565
Total				11,002
From which deduct lands sold Northwestern Lumberman, to wit:				
S. ½ & S. ½ of N. W. ¼ & N. W. ¼ of N. W. ¼	11	19	3	441
All	14	19	"	638
All	15	"	"	643

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
All, less lots 10, 11, 13, & 14	21	19	3	416
All, less lots 1, 2, 3	22	"	"	457
All	23	"	"	618
All	26	"	"	613
All	27	"	"	641
All, less lots 2 & 3	28	"	"	497
Total				4,964
Leaving for distribution the following, to wit:				
All	9	19	3	646
All	10	"	"	641
N. E. ¼ & N. E. ¼ of N. W. ¼	11	"	"	200
All	12	"	"	651
All	13	"	"	650
All	17	"	"	647
E. ½ & N. W. ¼ & S. W. ¼	18	"	"	556
All	24	"	"	652
N. E. ¼ & E. ½ of N. W. ¼ & S. ½ & N. W. ¼ of N. W. ¼ & S. W. ¼ of N. W. ¼	25	"	"	558
N. E. ¼ & E. ½ of N. W. ¼	35	"	"	242
N. ½ & S. E. ¼ & E. ½ of S. W. ¼	36	"	"	565
Total for distribution				6,038
16 E. ½	7	18	5	318
All	8	"	"	640
W. ½ of lot 2	13	"	"	40
Lots 1, 2, 4, & N. ½ lot 3	14	"	"	280
W. ½ of S. W. ¼	15	"	"	80
S. ½	17	"	"	320
E. ½ & ½ interest in W. ½	18	"	"	479
W. ½ of S. E. ¼ & W. ½ of N. E. ¼ & E. ½ of N. E. ¼ & W. ½ & E. ½ of S. E. ¼	19	"	"	636
S. ½ & N. W. ¼ & N. W. ¼ of N. E. ¼ & E. ½ of N. E. ¼	20	"	"	600
¼ int. in N. E. ¼ & E. ½ of N. W. ¼ & W. ½ of N. W. ¼ & N. E. ¼	21	"	"	320
Lot 3	22	"	"	80
E. ½ of N. W. ¼ & N. W. ¼ of N. W. ¼	24	"	"	120
E. ½	28	"	"	319

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
Erased, vacant	2	18	4	
Lot 5 and W. ½ of 2	17	"	"	87
Lots 1, 2, & 4	18	"	"	120
S. W. ¼	19	"	"	160
S. ½	23	"	"	334
E. ½ & S. W. ¼ & S. W. ¼ of N. W. ¼	24	"	"	527
N. E. ¼ & N. ½ of N. W. ¼	25	"	"	243
Lots 1, 2, 3, 4, 5, 6, 7, 10, & 11	26	"	"	363
S. W. ¼ & W. ½ of S. E. ¼	31	"	"	240
E. ½ & E. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼	34	"	"	441
All south of C. B. line	8	"	"	7
Total				2,513
E. ½ of N. W. ¼ & E. ½ of S. E. ¼ & N. E. ¼ & W. ½ of S. E. ¼, half int. in S. W. ¼ & W. ½ of N. W. ¼	1	18	3	477
W. ½ & S. E. ¼, ½ int. in N. E. ¼	2	"	"	524
E. ½ and W. ½ (all)	3	"	"	585
N. ½ & ½ int. in S. ½	4	"	"	444
Half int. in all	9	"	"	321
E. ½ & N. W. ¼ & E. ½ & S. W. ¼, ½ int. in N. ½ of S. W. ¼	10	"	"	600
17 All	11	18	3	647
W. ½ & W. ½ of S. E. ¼	12	"	"	400
½ int. in E. ½ of S. E. ¼	12	"	"	40
All	13	"	"	640
E. ½	14	"	"	322
S. ½	15	"	"	476
½ int. in W. ½	15	"	"	637
All	20	"	"	637
N. ½	19	"	"	279
N. ½ and ½ int. in S. ½	21	"	"	480
All	22	"	"	637
E. ½	23	"	"	322
All	24	"	"	641
S. ½ & N. W. ¼ & E. ½ of N. E. ¼	25	"	"	562
S. ½ and N. E. ¼	26	"	"	482
N. ½ & S. ½ (all)	27	"	"	636
½ int.	28	"	"	320
S. ½ & N. W. ¼ & N. ½ of N. E. ¼ & ½ int. in E. ½ & N. W. ¼	29	"	"	596
All	30	"	"	563

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
S. W. ¼ & N. ½ of S. E. ¼ & S. W. ¼ of S. E. ¼ & N. ½	31	18	3	536
E. ½ of N. W. ¼ & E. ½ of S. W. ¼	32	"	"	580
S. ½	33	"	"	326
All	34	"	"	638
All	35	"	"	640
All	36	"	"	641
N. ½ & W. ½ of S. E. ¼	12	"	"	400
Total				15,394
E. ½ & N. W. ¼	7	17	5	477
S. W. ¼ & N. ½ of S. E. ¼ & N. ½ of N. W. ¼ & S. E. ¼ of N. W. ¼ & S. ½ of N. E. ¼ of N. W. ¼ & N. W. ¼ of N. E. ¼ of N. W. ¼	8	"	"	389
Lots 1, 6	9	"	"	167
S. E. ¼	10	"	"	160
18 W. ½	11	17	5	320
S. ½	13	"	"	320
W. ½ & E. ½ (all)	19	"	"	640
E. ½ of W. ½ & N. ½ of S. E. ¼ & S. W. ¼ of S. E. ¼ & S. W. ¼ of N. E. ¼	20	"	"	320
S. ½ of S. E. ¼	21	"	"	80
S. ½	23	"	"	321
N. W. ¼ of N. W. ¼ & E. ½ & W. ½ of S. W. ¼ of N. W. ¼	24	"	"	486
N. W. ¼ & S. ½	25	"	"	487
N. ½	26	"	"	320
N. ½ lot 1	27	"	"	40
Lots 1, 2, 3, 4, & 5	28	"	"	400
E. ½	29	"	"	320
W. ½	29	"	"	318
E. ½ & W. ½	30	"	"	640
N. W. ¼ & W. ½ of N. E. ¼ & E. ½ of S. E. ¼ & S. W. ¼ & W. ½ of S. E. ¼	31	"	"	560
N. ½ of N. W. ¼ & S. W. ¼ of N. W. ¼	32	"	"	120
N. ½ & S. E. ¼ & E. ½ of S. W. ¼ & S. W. ¼ of S. W. ¼	34	"	"	602
S. ½ & N. ½ (all)	35	"	"	641
All	36	"	"	644
Total				8,776

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
Undivided ¼ int.	6	17	4	160
S. W. ¼	8	"	"	160
S. E. ¼	11	"	"	160
S. ½ & N. E. ¼	12	"	"	480
N. ½ & N. W. ¼ of S. E. ¼ & N. ½ of N. E. ¼ and S. W. ¼ of N. E. ¼	13	"	"	483
All	14	"	"	640
All	17	"	"	640
S. W. ¼	18	"	"	161
N. W. ¼ & N. ½ of N. E. ¼	19	"	"	240
E. ½ of N. E. ¼	21	"	"	80
N. ½ & N. ½ of S. E. ¼ & S. W. ¼ of S. E. ¼	22	"	"	440
E. ½	23	"	"	319
19 S. E. ½ & E. ½ of N. E. ¼	26	17	4	240
E. ½ of N. W. ¼	28	"	"	80
All	31	"	"	622
N. E. ¼ & E. ½ of N. W. ¼	35	"	"	245
Total				5,448
Lots 1, 2, 3, 4, 8, 19 to 32, incl.	1	17	3	761
Lots 1, 2, 3, 4, & 17 to 24, incl., & 26 to 30 & 32, incl.	2	"	"	821
½ int. in lots 1, 4, 7, 8, 9, 10, 12, 13 to 18 & 25 & 32	3	"	"	540
½ int. in lots 1, 2, 3, 4, 5, 6, 7, 8 and lots 9 to 15, incl., & 27 to 30, incl., & lots 19, 20, & 22	4	"	"	814
Lots 1, 2, 3, 4, 5, 7, & 8	7	"	"	595
½ int. in lots 5, 11, 12, & 13	8	"	"	81
All	15	"	"	640
Lots 6 & 7	17	"	"	117
Lot 2	21	"	"	80
All S. C. B. L., lot 16, & all N. C. B. L., lots 1 to 15, incl.	22	"	"	703
S. E. ¼ & E ½ of N. W. ¼ & W. ½ of N. W. ¼	25	"	"	375
Lots 6, 7, 8, 3, 4, 5, 12	26	"	"	287
W. ½ of N. E. ¼, lot 5, lots 1, 2, 3, & 4.	27	"	"	502
E. ½ of S. E. ¼	28	"	"	80
W. ½	30	"	"	320
W. ½ & W. ½ of S. E. ¼	31	"	"	400
W. ½ of N. W. ¼	34	"	"	80

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
S. ½ of lots 2 & 3 & lots 4, 5, & 6....	35	17	3	400
Lots 1 to 7, incl.....	36	"	"	444
Total.....	.....	.....	.....	8,046
All	1	24	4	638
All	2	"	"	638
All	3	"	"	629
Lots 1 to 16, incl.....	4	"	"	623
20 Lots 1 & 15.....	5	24	4	27
All	6	"	"	499
Lots 1 to 13, incl. (all).....	7	"	"	494
Lots 5 to 13, incl. (all).....	8	"	"	539
All	9	"	"	615
All	10	"	"	638
All	11	"	"	644
All	12	"	"	640
All	13	"	"	642
W. ½.....	15	"	"	320
All	17	"	"	547
All	18	"	"	587
Lots 1 to 16, incl. (all).....	19	"	"	570
Lots 1 to 15, incl.....	20	"	"	584
All	21	"	"	642
All	22	"	"	639
All	23	"	"	634
All	24	"	"	643
All	25	"	"	639
All	26	"	"	639
E. ½.....	27	"	"	322
All	30	"	"	576
All	31	"	"	593
Lots 3, 4, 4, 7 to 13, incl.....	32	"	"	431
All	33	"	"	641
All	34	"	"	641
All	35	"	"	642
All	36	"	"	641
Total	.....	.....	.....	18,403
21 All	1	24	3	604
All	2	"	"	650
All	3	"	"	645
All	4	"	"	643
All	5	"	"	642

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
All	6	24	3	642
All	7	"	"	644
All	8	"	"	642
All	9	"	"	645
All	10	"	"	641
All	11	"	"	645
All	12	"	"	635
S. ½	13	"	"	318
All	14	"	"	641
All	15	"	"	641
All	17	"	"	641
All	18	"	"	642
N. ½ & S. ½	19	"	"	644
All	20	"	"	644
N. ½ & S. E. ¼	21	"	"	479
All	22	"	"	640
All	23	"	"	638
All	24	"	"	638
N. E. ¼ & N. ½ of N. W. ¼ & S. E. ¼ of N. W. ¼	25	"	"	379
N. W. ¼	26	"	"	160
N. W. ¼	28	"	"	160
All	29	"	"	646
All	30	"	"	646
All	31	"	"	648
All	32	"	"	642
E. ½	35	"	"	320
Total				17,795
22 All	1	23	4	659
All	2	"	"	661
Lots 1 to 12, incl., & 14 & 45	4	"	"	519
N. ½	3	"	"	331
Lots 1 to 11, incl., & 1, 4, & 15	5	"	"	563
All	6	"	"	620
All	7	"	"	593
All	8	"	"	644
Lots 1 & 3 to 13, incl., & lot 2	9	"	"	550
All	10	"	"	614
All	11	"	"	638
All	12	"	"	643
N. ½ & S. E. ¼	13	"	"	482
N. E. ¼ & S. W. ¼ of S. W. ¼ of N. W. ¼	14	"	"	361
Lot- 1 to 13	15	"	"	576

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
N. ½ & S. E. ¼	17	23	4	479
Lots 11, 12, 13, & 14	19	"	"	149
Lots 1 to 6 & 9 to 11, incl	21	"	"	367
Lots 1, 2, 3, & 5 to 15, incl	22	"	"	606
N. W. ¼ of N. W. ¼ & S. W. ¼ of S. W. ¼	23	"	"	81
All	25	"	"	642
All	27	"	"	638
N. E. ¼ & S. W. ¼	28	"	"	322
S. ½ & N. W. ¼	29	"	"	482
All	30	"	"	586
All	31	"	"	542
All	32	"	"	641
All	33	"	"	642
All	34	"	"	642
All	35	"	"	643
N. ½ & S. E. ¼ & W. ½ of N. E. ¼	36	"	"	561
Total				10,477
23 All	1	23	3	638
All	2	"	"	638
S. ½	3	"	"	320
All	4	"	"	639
All	5	"	"	635
All	6	"	"	656
All	7	"	"	650
All	8	"	"	645
All	9	"	"	639
All	10	"	"	642
All	11	"	"	641
All	12	"	"	644
All	13	"	"	642
All	14	"	"	642
All	15	"	"	644
E. ½ & W. ½ of S. W. ¼ & N. E. ¼ of S. W. ¼ & W. ½ of N. W. ¼ & N. E. ¼ of N. W. ¼	17	"	"	563
All	18	"	"	648
All	19	"	"	643
E. ½	20	"	"	321
E. ½ of S. ½ of N. W. ¼ & N. E. ¼ of N. W. ¼ & N. W. ¼ of S. W. ¼	21	"	"	480
All	22	"	"	644
All	23	"	"	641
All	24	"	"	638

Exhibit "A"—Continued.

	S.	T.	R.	Acres.
N. ½ of N. E. ¼ & S. ½ of S. E. ¼ & N. E. ¼ of S. E. ¼	25	23	3	599
E. ½ and N. W. ¼	26	"	"	480
N. ½	27	"	"	322
N. E. ¼ & E. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼ & N. E. ¼ of S. E. ¼	29	"	"	323
E. ½	31	"	"	321
S. ½ & N. W. ¼ & E. ½ of N. E. ¼ & S. W. ¼ of N. E. ¼	32	"	"	605
S. E. ¼ & W. ½ of S. W. ¼ & S. E. ¼ of S. W. ¼ & E. ½ of N. E. ¼ & S. W. ¼ of N. E. ¼ & S. W. ¼ of N. W. ¼	33	"	"	441
S. W. ¼ & E. ½	34	"	"	482
E. ½ & S. W. ¼ of S. W. ¼ & N. W. ¼	35	"	"	522
W. ½ of N. E. ¼ & E. ½ of S. E. ¼ & S. E. ¼ of S. E. ¼	36	"	"	601
Total				19,148

24 *Recapitulation.*

	T.	R.	A.
	22	4	8,803
	22	3	18,314
	21	4	5,751
	20	5	160
	21	3	8,850
	20	4	3,362
	20	3	7,442
	19	5	4,840
Total acres 11,002			
Less sold N. W. Lumberman 4,964			
	19	3	6,038
	18	5	4,210
	18	4	2,513
	18	3	15,394
	17	5	8,776
	17	4	5,148
	17	3	8,046
	24	4	18,403

Recapitulation—Continued.

	T.	R.	A.
	24	3	17,795
	23	4	16,477
	23	3	19,470
Total			179,470
Of which Phillips and Marshall are entitled to two-sevenths, amounting to 51,272 acres. Your commissioners now allot to Phillips & Marshall the following, to wit:	22	4	8,803
	22	3	18,314
	18	3	15,394
	21	3	8,850
			51,361
Being 89 acres in excess of the amount due Phillips and Marshall.			

25 EXHIBIT "B."

This indenture made and entered into by and between Byron H. Evers, of London England, party of the first part and Mathew S. Baldwin of Chicago, State of Illinois party of the second part witnesseth: That whereas said party of the first part, has employed the party of the second part, in the negotiation of certain lands purchased, and said party of the second part having well and truly performed his undertaking herein; now in consideration of the premises and other good and valuable considerations from said party of the second part, to said party of the first part, the said party of the first part has granted, bargained, sold, aliened, and conveyed, and by these presents does hereby bargain, grant, sell, alien, and convey, unto said party of the second part, his heirs and assigns, an undivided one-fourth interest, in, and to, all tracts of lands, lying and being, in the county of Sunflower, Leflore, Quitman, Washington, Tallahatchie, Yazoo, Bolivar, Coahoma, Sharkey, and Tate, in the levee district, or any other counties, in which such counties may be located, in the State of Mississippi, and purchased by said party of the first part, from Eugene C. Gordon, and a one-half interest of which, has been sold by contract, to Thomas Watson, of Chicago, Ill. And it is agreed by and between the parties, that of the unsold interest, each party hereto has an equal share alike; the one-half unsold interest to have and to hold unto him the said party of the second part, his heirs in fee-simple and forever, but said party of the second part hereby covenants and agrees that said party of the

first part, may with his the said party of the second part, sell and convey the lands aforesaid, and may make deeds thereto, in the name of the said party of the first part, which shall vest in the grantee, the titles to the whole of said lands embraced in such deeds, and shall pass the interest thereto, of the said party of the second part, however, in case of a sale and conveyance as aforesaid, to the said party of the first part, shall pay one-fourth of the entire proceeds, or, one-half of the amount now remaining unsold of
26 such sale in trust for said party of the second part, and shall pay said sum upon demand, but in case of a partition of said lands, then the title to the lands allotted to each party, shall vest in him, and the power hereby created *pro facto* cease and determine. And it is further agreed by the parties hereunto, that the party of the first part may at any time, without first obtaining the written sanction or consent of the party of the second part, sell, bargain, and convey, his one-fourth interest, or any part thereof, in and to said lands in question, and make deeds to the same, and the same privilege and authority is by these presents granted unto the party of the second part, and he has power to make deed to the land in question, to one-fourth interest in the entire purchase from said Eugene C. Gordon.

Signed, sealed, and delivered this the 6th day of November, 1881, at the city of Jackson, State of Mississippi.

B. H. EVERS. [L. S.]

In the presence of—
J. P. BRADFORD.
J. C. BRANUM.

THE STATE OF MISSISSIPPI, }
Hinds County. }

Personally appeared before me, the undersigned, W. T. Ratcliff, chancery clerk in and for said county, the within-named J. C. Beanum, one of the witnesses to the foregoing instrument of writing, who, being first duly sworn, saith that he saw the within-named B. H. Evers, whose name is subscribed thereto, sign and deliver the same to the said Mathew S. Baldwin; that he, this deponent, subscribed *m*is name as a witness thereto in the presence of the said B. H. Evers, and that he saw the other subscribing witness sign the same in the presence of the said B. H. Evers; that the witnesses signed in the presence of each other on the day and year therein mentioned.

J. C. BRANUM.

Sworn to and subscribed before me this the 11th day of April, 1892.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Filed July 29th, 1882, at 11 o'clock a. m., and recorded Oct. 16, 1882.

J. Y. WALTON, *Clerk.*

Recapitulation—Continued.

	T.	R.	A.
	24	3	17,795
	23	4	16,477
	23	3	19,470
Total...			179,470
Of which Phillips and Marshall are entitled to two-sevenths, amounting to 51,272 acres. Your commissioners now allot to Phillips & Marshall the following, to wit:	22	4	8,803
	22	3	18,314
	18	3	15,394
	21	3	8,850
			51,361
Being 89 acres in excess of the amount due Phillips and Marshall.			

25 EXHIBIT "B."

This indenture made and entered into by and between Byron H. Evers, of London England, party of the first part and Mathew S. Baldwin of Chicago, State of Illinois party of the second part witnesseth: That whereas said party of the first part, has employed the party of the second part, in the negotiation of certain lands purchased, and said party of the second part having well and truly performed his undertaking herein; now in consideration of the premises and other good and valuable considerations from said party of the second part, to said party of the first part, the said party of the first part has granted, bargained, sold, aliened, and conveyed, and by these presents does hereby bargain, grant, sell, alien, and convey, unto said party of the second part, his heirs and assigns, an undivided one-fourth interest, in, and to, all tracts of lands, lying and being, in the county of Sunflower, Leflore, Quitman, Washington, Tallahatchie, Yazoo, Bolivar, Coahoma, Sharkey, and Tate, in the levee district, or any other counties, in which such counties may be located, in the State of Mississippi, and purchased by said party of the first part, from Eugene C. Gordon, and a one-half interest of which, has been sold by contract, to Thomas Watson, of Chicago, Ill. And it is agreed by and between the parties, that of the unsold interest, each party hereto has an equal share alike; the one-half unsold interest to have and to hold unto him the said party of the second part, his heirs in fee-simple and forever, but said party of the second part hereby covenants and agrees that said party of the

first part, may with his the said party of the second part, sell and convey the lands aforesaid, and may make deeds thereto, in the name of the said party of the first part, which shall vest in the grantee, the titles to the whole of said lands embraced in such deeds, and shall pass the interest thereto, of the said party of the second part, however, in case of a sale and conveyance as aforesaid, to the said party of the first part, shall pay one-fourth of the entire proceeds, or, one-half of the amount now remaining unsold of
26 such sale in trust for said party of the second part, and shall pay said sum upon demand, but in case of a partition of said lands, then the title to the lands allotted to each party, shall vest in him, and the power hereby created *pro facto* cease and determine. And it is further agreed by the parties hereunto, that the party of the first part may at any time, without first obtaining the written sanction or consent of the party of the second part, sell, bargain, and convey, his one-fourth interest, or any part thereof, in and to said lands in question, and make deeds to the same, and the same privilege and authority is by these presents granted unto the party of the second part, and he has power to make deed to the land in question, to one-fourth interest in the entire purchase from said Eugene C. Gordon.

Signed, sealed, and delivered this the 6th day of November, 1881, at the city of Jackson, State of Mississippi.

B. H. EVERS. [L. S.]

In the presence of—
J. P. BRADFORD.
J. C. BRANUM.

THE STATE OF MISSISSIPPI, }
Hinds County. }

Personally appeared before me, the undersigned, W. T. Ratcliff, chancery clerk in and for said county, the within-named J. C. Beanum, one of the witnesses to the foregoing instrument of writing, who, being first duly sworn, saith that he saw the within-named B. H. Evers, whose name is subscribed thereto, sign and deliver the same to the said Mathew S. Baldwin; that he, this deponent, subscribed *mis* name as a witness thereto in the presence of the said B. H. Evers, and that he saw the other subscribing witness sign the same in the presence of the said B. H. Evers; that the witnesses signed in the presence of each other on the day and year therein mentioned.

J. C. BRANUM.

Sworn to and subscribed before me this the 11th day of April, 1892.

W. T. RATLIFF, *Clerk*,
By A. G. MOORE, *D. C.*

Filed July 29th, 1882, at 11 o'clock a. m., and recorded Oct. 16, 1882.

J. Y. WALTON, *Clerk.*

27 EXHIBIT "C."

In consideration of three thousand dollars, I convey and warrant specially to Leander C. Goodsell, of Nashua, State of Iowa, all my right, title, and interest in and to those certain lands in the county of Sunflower and State of Mississippi purchased from E. C. Gordon by Byron H. Evers in the year 1891, and now in controversy in the district court of the United States for the western division of the northern district of said State, in the cause of Thomas Watson and others against Byron H. Evers and others, and also all my share of the proceed- of said suit.

Witness my signature this 11th day of October, A. D. 1885.

MATHEW S. BALDWIN. [SEAL.]

STATE OF ILLINOIS, }
Cook County. }

Personally appeared before me, a notary public in and for said county, Mathew S. Baldwin, who acknowledged that he signed, sealed, and delivered the foregoing instrument, on the day and year therein mentioned, as his own act and deed.

Given under my hand and seal of office this the seventh day of October, A. D. 1885.

WILLIAM B. CUNNINGHAM,
Notary Public.

Filed for record the first day of December, 1886, at 10 o'clock a. m.

J. Y. WALTON, *Clerk.*
By J. W. GILDART.

28 EXHIBIT "D."

In the District — of the United States for the Western *District* of the Northern District of Mississippi. In Equity.

THOMAS WATSON, Complainant, }
—
BYRON H. EVERS *et al.*, Defendants. }

Be it remembered that this cause came on this day to be heard upon the motion of the complainant for an interlocutory decree or order of reference preparatory to a settlement to the matters of controversy herein involved, and the court, being hereof sufficiently advised, is of opinion that the said motion ought to be sustained, and therefore orders, adjudges, and decrees as follows:

1. The defendant Evers is of right -title- to the one-third interest in what is known as the delta lands and a one-fourth interest in the pine lands set out and described in complainant's original bill and exhibits, subject to the charges hereinafter mentioned and a proportionate payment thereof.

2. That the rights of the other parties are governed and controlled by agreement of December the 15th, 1884, and that the interest of the said parties, to wit, George Frederick Williams, William Marshall, Mathew S. Baldwin, and Thomas Watson, in and to the said delta lands, after carving out of the same the interest of the defendant Evers, as provided in paragraph one of this decree, are as follows: An undivided third part of the said delta lands remaining for the disposition to the said Phillips and Marshall and an undivided one-fourth of the pine lands so remaining; an undivided one-third part of said delta and one-fourth part of said pine lands so remaining to the complainant, Thomas Watson, and an undivided third part of said delta lands and an undivided fourth of said pine lands so remaining to the defendant Mathew S. Baldwin, all of said interest being chargeable according to the terms and tenor of said agreement of December 15th, 1884.

29 3. That in accordance with the proposition contained in the answer of the defendant Evers that he, the said Evers, assents to a lien being charged upon the delta lands for money and interest advanced by Thomas Watson for the purchase of the same, now assented to by the complainant, and the said December agreement, the deeds executed by the complainant Watson to the defendant Evers conveying his interest in the delta lands, and all the deeds executed by the said Evers to complainant Watson conveying any interest in the said pine or delta lands, and all bargains or sales of all kinds by and between the parties subsequent to the purchase of the said delta lands by said Evers and prior to the said December agreement, are hereby vacated, set aside, and for nothing held, saving to all persons not parties to this cause all rights acquired and held under them, and that as to the said Evers the complainant shall stand in the attitude of a lien creditor or mortgagee, with the right to have full satisfaction and the payment of all monies advanced by him towards the purchase of the said delta lands, and as to the defendant- Baldwin and Phillips and Marshall the complainant under the said agreement of December 15th, 1884, is entitled to be reimbursed all said sums of money and to have the interest in the lands or surplus proceeds of sale thereof, as provided in paragraph two of this decree.

4. That the papers in the cause *and* referred to James M. McKee, as a special commissioner, to take and state an account, first, of the amount of money advanced and paid by complainant Watson to the defendant Evers for the purchase of the delta lands set out in the bill, and of any sums of money of said Watson by said Evers invested in the said pine lands; second, of the amounts advanced by Phillips, Marshall and Company, or either of the them, and by said Baldwin for the purchase of said delta and pine lands respectively and actually invested in the same and for the payment of all expenses covered by the said agreement of December 15th, 1884, and, third, the amount paid, laid out, and expended by either

30 of the said parties in the payment of taxes on the said lands and in and about perfecting the title thereto. On the amounts

found the commissioner will allow interest at the rate of six per cent. per annum from the date of payment.

5. That the said delta lands shall stand charged first and as a prior lien with the cost of the cause, including the receiver's commissioners and charges and the money borrowed by the receiver under the orders of this court and interest thereon at the rate of ten per cent. per annum; next, with the sums advanced by either party in the payment of taxes upon the said lands and ten per cent. per annum thereon; next, with the money invested by the complainant in the said lands and money invested therein by Phillips, Marshall, Evers, and Baldwin or either of them—that is to say, the money actually invested in the same for the purchase thereof—and that the said Thomas Watson, George F. Phillips, and William Marshall shall also be entitled to have a lien and charge as *agent* the interest vested in said Watson and Phillips, Marshall and Baldwin for the expenses provided to be paid to said Thomas Watson and Phillips and Marshall under the said December contract.

6. That the commissioner shall on his account treat the fee claimed by Nugent and McWillie, or by Joshua Green, their assignee, as part of the money advanced by the defendants Phillips, Marshall and Company or said Phillips; but as said fee claimed relates to some matters in which complainant and defendant Baldwin have no interest and for which they should not be chargeable, the said commissioners will ascertain and report what part of said fee should not be allowed in favor of said Phillips, Marshall and Company or either of them as against the said pine and delta lands and the interest therein of said Watson and said Baldwin, as hereinbefore set out.

7. That the defendant George Frederick Phillips shall, on or before the first day of December, A. D. 1885, appear before the commissioner heretofore charged with the duty of taking this deposition and complete the same, under such penalty as may be pre-
31 scribed on his failure so to do, and he shall exhibit and prove all advances heretofore ma*b*e by him on account of said pine and delta lands, and when and how made, by the 4th day of September, 1885. Should he fail so to do the defendant- Marshall and Evers may do so, and if necessary may produce such evidence thereof as they may be advised of and can procure.

8. That in consideration of the complainant and defendants electing to treat the fees claimed by said Nugent and McWillie or Joshua Green, their assignee, as having been paid by the deposit made by said Evers in Green's bank, as set out in the pleading, by consent of all the parties to the cause, the auditor of public accounts is enjoined and restrained from selling and disposing of any of said pine and delta lands now held by the State until the first day of November next, up to which time the receiver may purchase sai*b* lands or any party to the suit for him or the purchaser of said lands under any decree of this court. If the said lands are not purchased by that time the auditor of public accounts shall have the right to dispose of the same to any purchaser.

9. That George Frederick Phillips, William Marshall, Mathew S.

Baldwin, and all the other parties to this suit are enjoined from the further prosecution of any other suit that is pending in this or any other court of the United States or of this State touching any of the matters involved in this controversy, and no recovery shall be had in their favor or in the favor of either of them in this cause until the evidence of the dismissal of any such suit as may now be pending is filed among the papers of this cause.

10th. That the said commissioner shall ascertain and report to the court as to the said pine lands an account similar to that required under paragraph five of this decree as to the said delta lands, and the said pine lands shall stand charged in like manner as the said delta lands for any sums so reported.

11. That the Iowa farm acquired by the defendant Evers for N. T. Burroughs in part payment of some sixty thousand acres of the delta lands, sold by the said Evers to the said Burroughs,
32 shall stand in place of and be considered as the said delta lands, and that the complainant and defendants Phillips, Marshall, Evers, and Baldwin have the same interest therein as in the said delta lands.

12. That all parties that have sued out attachments against the interest of said lands of any party to this suit or who may have acquired liens thereon before or after bringing of this suit may propound their claim in this cause on or before the first day of October next and have the same fixed and determined in the after decree therein of this court, or they may, at their election, after having so prpcounded their claims, proceed to judgment and decree in the State court of the courts now having jurisdiction thereof and propound their judgments and decrees in this cause for payment; but no such claim shall be filed by the clerk of this court until the preponent shall sign and file a written stipulation with his petition that he will consent and agree to take any sum of money that may be adjudged to him by this court in this cause in the place and stead of any money that he may realize otherwise and to an injunction to his taking any other or different proceeding for the collection of his claim or judgment or decree and from any and all further and other proceedings in any other court.

13. That any person or corporation who may have advanced and loaned money to the complainant or defendants or any one of them for the purchase of the said delta and pine lands or either or for payment of taxes thereon or expenses connected therewith may propound their or his or its claim for such money in this cause and have such decree as may be proper for the protection of their rights out of Phillips, Marshall and Co.'s share of the fund realized from the sale of the said pine and delta lands under the orders and decrees of this court, so as not, however, to effect or prejudice in any manner the rights of Thomas Watson herein.

14. That the defendant B. H. Evers shall render his account to the commissioner hereinbefore appointed of all monies re-
33 ceived by him upon the sales of any part of the said pine or delta lands, and particularly sold to N. T. Burroughs, and how the same was expended, and shall stand chargeable in this

cause with any balance found by said commissioner against him in favor of the party in controversy.

15. That the cross-bill filed herein by the defendant- Phillips and Marshall against the defendant Evers be, and the same is hereby, dismissed in so far as it seeks a settlement of the partnership accounts of Phillips, Marshall & Co., but retained only for an accounting on the part of the said Evers, with said Phillips, of and concerning moneys received by him for said Phillips for investment in the said pine and delta lands a/d for the payment of expenses and taxes, and the said accounting may be had at any future time on the application of said Phillips. The cross-bill as to the said Marshall is on his order dismissed.

16. That the said amended bill of petition filed in the cause for Thomas Watson on the 10th day of March, A. D. 1885, be, and the same is hereby, dismissed.

17. That the commissioner shall make his report to this court and account under the decree on or before the first day of October next, at which time exceptions may be filed by any party to this suit, and the same shall be then heard and determined and a decree entered for the sale of said pine and delta lands.

18. That the legal and equitable title of all the parties to this suit in and to all the pine and delta lands involved in this cause, except the lands held and claimed by N. T. Burroughs, be, and the same are hereby, divested out of them and vested in James D. Stewart, receiver in this cause, and such titles shall be held by him subject to the further order and decree of this court in this cause.

Ordered, adjudged, and decreed this the 31st day of July, A. D. 1885.

R. A. HILL, *Judge, &c.*

34 EXHIBIT "E."

In the District Court of the United States for the Western Division of the Northern District of Mississippi, at the Special August Term, 1885.

THOMAS WATSON, Complainant,
vs. } 314.
BYRON H. EVERS *et als.*, Defendants.

Be it remembered that this cause came on this day to be finally heard upon the bills, answers, exhibits, pleadings, proof, the agreement between the defendants herein filed on the second day of October, A. D. 1885, which is made a part of this decree, and the report of the commission, which is in all things ratified, approved, and confirmed, and upon the agree*h*ent, in open court, of the defendants and the complainant, Thomas Watson, whereby it was stipulated that the said complainant elected to take, in lieu of his advances and interest in the pine and delta lands, set out in the bill and exhibits, and the Iowa farm, obtained from N. T. Burroughs by defendant Evers, the sum of one hundred and forty-five thousand five hundred dollars, to be paid in six months, with six per

cent. interest, out of which he is to pay George F. Phillips for himself and Bell Goodsell Baldwin the sum of sixteen thousand five hundred dollars, and the said defendants agreed to give and pay the same, subject to the stipulations hereinafter set out; and the court, being thereof sufficiently advised, and upon the consent in open court of all parties to the cause, doth order, adjudge, and decree as follows:

1. That there is due to M. D. Watson, trustee, for money advanced to pay taxes on the lands in controversy in this suit, thirty-five thousand one hundred and sixty-six $\frac{48}{100}$ dolls., with interest from this date at the rate of ten per cent. per annum, and to George
35 Fred-rick Phillips the sum of twenty-one thousand two hundred and thirty-two dollars and 66 cents for so much money advanced for said purpose, with interest thereon at the rate of ten per cent. per annum; which said two sums are adjudged to be paramount liens upon the delta lands set out in the bill and exhibits, and especially upon those of said lands purchased by the receiver from the State of Mississippi under the interlocutory decree heretofore entered in this cause, and unless the said sums are paid within six months from this date said lien will be enforced and said delta lands, or so much thereof as may be necessary, sold for the payment thereof by James McKee, Esquire, who is selected by the parties and on their recommendation appointed commissioner for that purpose in such exigency, after giving notice thereof in the Weekly Clarion one month, at the United States court-house door, in Jackson, southern district; that to this end the said M. D. Watson shall file in the registry of this court the receiver's certificates heretofore issued and delivered to him to be cancelled, and that the money to discharge the same, realized under this decree, be likewise paid into court by said commissioner or to their attorneys of record of said parties, unless the parties themselves appear in person or by attorney, at any such sale made and bid, in which case their bids shall be taken as cash except as to the excess bid by them and above the sum due to them respectively.

2nd. That for his advance as stated under the decree of July 31, 1885, and his interest in the pine and delta lands sold as aforesaid *and to* complainant, Thomas Watson, do have and receive from the defendant- Byron H. Evers, George F. Phillips, William Marshall, and Mathew S. Baldwin one hundred and forty-five thousand five hundred dollars, with interest thereon at the rate of six per cent. per annum, which said sum is decreed to represent and be the purchase-money for the pine and delta lands set out in the bill and exhibits, and a lien thereon second only to the liens set out in paragraph one of this decree; and unless the said last-named
36 sums of money is paid by defendants, with interest thereon from this date at the rate of six per cent. per annum, within six months from this date the said pine and delta lands or a sufficiency thereof to pay the said sum of money and interest, with costs and expenses of sale, shall be sold at the front door of the United States court-house, in Jackson, southern district, after notice of sale published in the Weekly Clarion for three successive weeks at

least on-e in each week, by James McKee, Esq., who is selected by the parties, and therefore appointed by the court, commissioner for that purpose. He will sell said lands for cash to the highest bidder and will accept as cash the bid of Thomas Watson or his attorney for the sum due him, requiring payment of only a sufficient sum to cover costs, commissioner's fees, and the claims of said Austin and Union *and* Iron and Steel Company, as above, and of Belle Goodsell Baldwin and George F. Phillips, as set out in paragraph seven of this decree.

3. That the defendants shall pay or cause to be paid within ninety days the taxes now due upon all the delta and pine lands set out in the bill and exhibits and which have been repurchased by the receiver herein under orders of the said court, and if they fail so to do within the time limited, then and in that event the sum of money adjudged to the complainant in the second paragraph of this decree shall become thereupon instantly due and payable, and the complainant may proceed at once to execute this decree and have the lands on which he has his lien sold for the payment thereof.

4. That of the money adjudged to complainant *then* be paid into court, or, in case of sale, retained by the commissioners, sixteen thousand dollars to answer any decree that may be recovered by Henry S. Austin against complainant in the chancery court of the first district of Hinds county, and in case said Austin succeed in said suit such money shall be paid E. E. Baldwin, Esq., his attorney of record, and twenty-five thousand dollars to answer any judgment the Union *and* Iron and Steel Company may recover finally
37 against William Witson; that the plaintiff in said cause shall prove the same against the complainant and not delay the final disposition thereof, this court reserving to itself the right to make such further orders as may be necessary to enforce compliance with this decree. E. E. Baldwin, Esq., is hereby recognized as the attorney of the Union Iron and Steel Company and entitled to receive any money for it.

5. That the claim of Hill & Beckerdike herein propounded for thirty thousand dollars against the defendants Phillips, Marshall, Evers, and Baldwin not being recognized by them is not herein and hereby adjudicated, and that the said Hill & Beckerdike are hereby remitted to their action in the State court for recovery thereof and may proceed with the same to final decree, and, after such final decree, may propound the same here for payment according to the facts as adjudged.

6. That the interest of defendants in and to the said delta and pine lands are hereby fixed and determined as follows—that is to say, as to the delta lands, the interest of Byron H. Evers at three-sevenths, the interest of Mathew S. Baldwin at two-sevenths, and the interest of Phillips and Marshall at two-sevenths; and as to the pine lands, the interest of said Evers at one-third, and of said Baldwin at one-third, and of said Marshall and Phillips at one-third; that the said interest in said lands respectively shall stand and be charged with the sums of money which the said parties entitled thereto may owe each to the other upon the accounting herein-

after ordered, and said sums of money are hereby adjudged to be liens paramount upon said several interests after payment of the sums set out in paragraph one and two of this decree, and such liens may be enforced hereafter to and in favor of the parties respectively by supplemental decree.

7. That the complainant, Thomas Watson, shall, out of the monies herein adjudged to him, in pursuance of said agreement, pay to Belle Goodsell Baldwin or E. E. Baldwin, Esq., her attorney, thirteen thousand two hundred and sixty-eight and $\frac{14}{100}$ dollars, which said sum of money shall be a lien upon the sum decreed the
38 said Watson, and the balance of said sixteen thousand five hundred dollars to George F. Phillips, through J. B. Harris, Esq., his attorney. Said sums of money shall bear interest from this date at six per cent. per annum.

8. That to facilitate the settlement and adjustment of the rights of the parties in and to the said pine and delta lands herein litigated said lands shall be partitioned to and among the defendants subject to the lien herein adjudged by paragraphs one and two of this decree, as indicated in paragraph six of this decree, and for this purpose James McKee, Marion Smith, and Rice H. Winter be, and they are hereby, appointed commissioners, and they are hereby requested, after taking an oath faithfully to discharge their duty, without delay to allot and set apart to the parties their respective shares or interests in the said pine and delta lands, parcelling the same, as far as practicable, into lots of five thousand acres. Any vacancy in the board of commissioners may be filled by the remaining, and if any two fail to act the solicitors for the parties may select others to act in their place.

When said commissioners shall complete their labors they shall make report *by* their proceedings, stating specially the lands allotted to the parties, and they shall give to the defendants certificates of the lands partitioned and set apart to them respectively, and upon presentation by the parties of such certificates to the receiver he shall make and execute proper deeds of conveyance to the parties, and shall deposit and file the same with the clerk of the court to be delivered as this court may hereafter order, but not so as to affect the liens adjudged in favor of complainant.

9. That the defendants Phillips, Marshall and Company and Baldwin small, within thirty days from this date, effect an adjustment of their matters of account, in London, in the manner following—that is to say, the said Phillips, Marshall and Company, to wit, George F. Phillips, William Marshall, and Byron H. Evers, shall select an arbitrator, the majority of the firm having the
39 right in case of difference to name the arbitrator, and the said Baldwin shall select an arbitrator, and they t-o, in case of difference, an umpire, and their decision and award shall be final; that the said members of the firm of Phillips, Marshall and Company, to wit, George F. Phillips, William Marshall, and Byron H. Evers, shall adjust their matters of account among themselves in the following manner—that is to say, according to the stipulations of their articles of partnership, if that can be done, or, if not, then

each of said firm shall select one arbitrator, and a majority of said arbitrators, in case of disagreement, shall select an umpire, who shall decide all questions submitted to him, and the award of said arbitrators and umpire shall be final. The report of said arbitrators shall be made to this court with all dispatch, and if either party declines to select an arbitrator the others may do so for him, and if either member of the firm refuse to select an arbitrator in case of difference with other members of the firm the arbitrators selected by the other members of the firm may appoint and designate an arbitrator for such recusant party. The arbitrators shall be selected in London and shall be parties resident in said city, and if any one of the defendants parties to the said agreement of October 2nd, 1885, fail completely to act — shall forfeit and release any and all lien under this decree.

10. That to facilitate the partition in quality and quantity the said pine and delta lands the receiver shall at once make up and deliver to the commissioners herein appointed true and correct schedule thereof for each county in which such lands are situated, and shall make up separate lists or schedules of the lands purchased by him from the State under the interlocutory decree of this court and of those now held by the State, the right of redemption to which will expire on the first day of November next, and those held or claimed by citizens of the State under purchase at tax sale; and in making partition of said lands the commissioners will, as far as practicable, give to the parties an equal ratable amount of the lands held by the State and which are to be sold by the auditor of public accounts if not purchased by the first day of November as aforesaid, and they will proceed in like manner as to the lands repurchased by the receiver from the State of Mississippi and those held and claimed by others under tax sales.

11. That upon the ascertainment and report to this court of the amount due by Baldwin to Phillips, Marshall and Co. and by the members of said firm to one another the same shall become due and payable, with sixteen per cent. interest, and unless paid within six months from this date, with interest, the party entitled to any such payment may, on motion and without notice, have a decree against the party indebted, enforcing his lien and charge upon the lands allotted and partitioned to such debtor.

12. That the defendant William L. Nugent, for himself and firm and Green's bank, his and their assigns, shall accept the certificate for balance due in account to the defendant Byron H. Evers, in full payment and discharge of his and their fees for all services rendered to the firm of Phillips and Marshall & Co. and to said Baldwin and others in and about the lands herein litigated, and for all services since the rendition of their account, rendered and to be hereafter rendered, in all suits now pending against said Phillips, Marshall and Company and said Evers, touching any of said lands and calling in question their titles thereto.

13. That the following liens, claims, and demands, subordinate to the liens in favor of the parties to this suit, and for the taxes paid by the receiver, are hereby recognized as charges upon the land

allotted and partitioned to the parties respectively—that is to say, upon the lands of the defendant Byron H. Evers and the claim of S. S. Calhoon and Marcellus Green, partners in the practice of law, for the sum of eighteen hundred and twent*ie*-five $\frac{25}{100}$ dollars and an interest and claim of seven and one-half per centum of all the interest of said Evers in said lands so ascertained and fixed, the said Evers to pay all the taxes thereon for the present year, subject to an option in favor of said Evers to purchase said interest of seven and — half per
41 cent. at the price and sum of eight thousand dollars, and a like claim in the interest of said Evers in favor of Hoardly, Johnston & Colston of eight hundred and $\frac{80}{100}$ dollars and costs to be taxed, & a like claim in favor of S. Gwin, auditor, for five hundred dollars, interest from May 10th, 1884, at six per cent., to be included hereafter, in the settlement between said Evers and his said firm and said Baldwin, but not so as to interfere with the rights of said Gwin, auditor, to issue out execution upon his decree rendered by the circuit court of the United States for the southern district of Mississippi, and a like claim of one thousand and sixteen and $\frac{66}{100}$ dollars, with interest thereon at six per cent. from April 1st, 1884, in favor of the Central Lithographing and Publishing Company, and a like claim in favor of H. A. Summers, chancery clerk of Tallahatchie county, fo*r* five hundred and thirty-eight $\frac{57}{100}$ doll's for recording deeds.

Upon the lands of the defendant- Phillips and Marshall the claim for fees of W. P. & J. B. Harris, attorneys-at-law, amounting to three thousand dollars, and the fee claim of Jordon, Jordon & Williams, solicitors, amounting to forty-six hundred dollars, subject, however, to the rights of said Phillips and Marshall to controvert with said Jordon, Jordon and Williams in the suit now pending in the chancery court of De Soto county touching the extent of said fee; the said Jordon, Jordon and Williams, upon the rendition of the final decree in said cause by said State court, may bring a certified copy thereof into this court and on motion and without notice have a decree in this cause for the sale of the lands set apart to said Phillips and Marshall; all to secure satisfaction of their said judgment.

Upon the lands of the defendant Matthew S. Baldwin the fee claimed of E. E. Baldwin, attorney-at-law, amounting to ten thousand dollars.

14. That the complainant Watson shall with all dispatch dismiss his suit in Cherokee against the Iowa far*h* set out in the proceedings; that the receiver shall forthwith surrender to the defendants the possession of the pine and delta lands set out in the
42 pleadings and exhibits, and to N. T. Burroughs, Esq., for safe keeping, all deeds, books, and minutes of title relating to the said delta and pine lands, and he shall proceed for the parties to have all the unrecorded deeds placed on record with all convenient dispatch.

The receiver shall, before delivering the State deeds in his possession to said Burroughs, have the same recorded and have the cost thereof taxed as a part of the cause.

15. That if either one or more of the defendants pay the sum herein adjudged to the complainant he or they shall be subrogated to his rights and may enforce the lien herein adjudged to him, and if either one or more of the defendants pay the sum adjudged in favor of M. D. Watson, trustee, and George F. Phillips, for taxes paid, he or they shall be subrogated to their rights and may enforce the lien provided in this decree for their benefit.

16. That the defendant Byron H. Evers shall, within thirty days, cause the Iowa farm referred to in the pleadings to be reconveyed to himself and Phillips, Marshall, and Baldwin, to be held upon the like terms with the delta lands, as indicated in this decree.

17. That all the claims and demands of any kind propounded in this cause have been herein and hereby disposed, except the claim of said Hill and Breckerdike, which is remitted to the State court for adjudication, as hereinbefore set out. Either party defendants to this suit may withdraw papers and vouchers filed by him and necessary to a settlement of the cause in London.

18. That the receiver shall make his report to this court by the first day of the next term of the court and state the conditions of all contracts made by him. He will make no further contract touching the administration of the estate in his hands.

19. That the clerk shall make up the cost bill in this cause, and that the cause be, and the same is, retained to secure payment of the same, and for the purposes stated in this decree, and to effectuate final settlement between the parties, and for making such further orders and decrees as may be *equitable* or necessary to fur-
43 ther the rights of the parties not finally disposed of.

Ordered, adjudged, and decreed this the 3rd day of October, A. D. 1885.

R. A. HILL, *Judge, &c.*

Amended Bill.

LEANDER C. GOODSELL *vs.* DELTA AND PINE LAND CO. *et al.* } 543. In the Chancery Court, Sunflower County.

LEANDER C. GOODSELL, a Citizen of the State of Iowa, Complainant, *vs.* THE DELTA AND PINE LAND COMPANY, a Corporation of the State of Mississippi; William Watson, a Citizen of the said State, Individually and as Secretary of said Company; Thomas Watson, a Citizen of the State of Illinois, Resident of the City of Chicago; Byron H. Evers, George F. Phillips, and William Marshall, Subjects of Her Majesty Queen Victoria, Residents of the City of London, England, Defendants.

To the honorable the said chancery court:

Your orator, the said Leander C. Goodsell, respectfully shows to your honor and states as follows:

1. He heretofore filed in your honorable court his bill against the

above-named defendants, in which he alleges that on the 8th day of November, 1881, Byron H. Evers, of the city of London, was the owner of all those lands in the county of Sunflower described and set forth in Schedule "A" exhibited with said bill, and on said day did sell and convey an undivided one-fourth therein to Mathew S. Baldwin by indenture, a copy of which is exhibited with said bill and marked "B," and on the 7th of October, 1885, the said Mathew S. Baldwin, for the consideration of $3,000.00, sold and conveyed to your orator all his right, title, and interest in and to said lands, the instrument conveying which said interest was filed with said bill as Exhibit "C;" that all said lands and divers and other lands
44 situated in other counties of the Yazoo and Mississippi delta were purchased by one E. C. Gordon, who purchased from Hemingway and Gibbs, auditor and treasurer, &c., under the decree of the chancery court of Hinds county for the first district in the case of Joshua Green *vs.* said Hemingway and Gibbs; that the titles to the land sold thus by said Gordon and conveyed under the — of said court was paramount.

2nd. In said bill your orator stated, under paragraph four thereof, that the defendant Thomas Watson, claiming to be the owner of said lands because of a trust resulting from the investment therein of money supplied by him to Evers, filed his bill in the district court of the United States for the northern district of Mississippi, sitting as a court of equity, to establish said trust, &c. This allegation was made under a mistake of facts, and your orator, desiring to correct that mistake, files this bill by way of amendment, setting forth the actual proceedings had, and therefore states as follows: On July 12th, 1884, said Thomas Watson exhibited his bill in the chancery court of De Soto county, Mississippi, stating in said bill that he was a citizen of the State of Illinois, against Byron H. Evers, George F. Phillips, and William Marshall, stated therein to be aliens, and Matthew S. Baldwin, stated therein to be a citizen of the State of Illinois, for the purpose of establishing a trust in said lands growing out of the fact that he advanced the purchase-money thereof to said Evers. The said Byron H. Evers as aforesaid and the said George F. Phillips and William Marshall, aliens, filed their answer to said bill, denying said trust and claiming that said Evers had sold an interest in said lands to said Watson. A supplemental bill was also filed in said State chancery court making Sylvester Gwin, auditor of public accounts, a party defendant; to which supplemental bill answers were likewise filed, and the said Phillips and Marshall filed an elaborate answer in said cause, making the same a cross-bill for equitable relief against said Evers and Baldwin. At this stage of the case the said Byron H. Evers filed in the said State chancery court a petition for the removal of said cause to the district court of the United States for the northern
45 district of Mississippi, in equity, alleging on the face of his petition that he was an alien, and was at the commencement of the suit and still is a citizen of the state of Great Britain and an alien, and that the said Thomas Watson was then and still is a citizen of the State of Illinois, and that was then a separable con-

troversy in the said cause between the petitioner and the said Thomas Watson. To the said petition a bond was attached, and the petition and bond were filed in the said chancery court on the 26th day of December, 1884. The bond, however, as your orator is informed, believes, and states, was never approved, nor was there ever any order in said cause made by the State chancery court for the removal thereof to the said district court of the United States. On the contrary, the said Evers, as your orator supposes and states, acting upon the advice of counsel and being persuaded, as the law was and is, that the right of removal on his part did not exist, failed and neglected to file in the said Federal court a transcript of the record from the State chancery court. Said record or transcript, as your orator is informed, believes, and states, was never filed by any one in the said Federal court. So it was, however, that on the 23rd day of January, 1885, the said Thomas Watson, then being, as he had before been, a citizen of the State of Illinois, by leave of the said Federal court, exhibited and filed an amended bill in the cause, in which he stated himself to be a citizen of the State of Illinois and that the said Phillips, Evers, and Marshall were aliens, subjects of Her Majesty Queen Victoria, of Great Britain, and that the said M. S. Baldwin was a citizen of the State of Illinois, resident in Chicago. On the face of the bill exhibited in the State court the citizenship and alienage of the parties were distinctly and carefully stated, so that it appeared from the bill itself that the district court of the United States for the northern district of Mississippi was wholly without jurisdiction to hear and determine the subject-matter of controversy between the parties if the proceedings to remove had been formally conducted.

46 3rd. In said amended bill so filed in said Federal court it was stated that the case was pending on its merits therein, but that the said Byron H. Evers had neglected and failed to file a transcript thereof, as he should have done. For this reason the said Watson in said bill stated that he filed as Exhibit No. 1 thereto a full transcript of the case from the chancery court of De Soto county, Mississippi, for the purpose of showing the full status of the controversy between the parties thereto and as far as it had proceeded in that court, and prayed leave to read the same at that point stated in said bill for the information thereof, but he says that Exhibit No. 1 was never filed in said Federal court, as your orator is informed, believes, and states, as the transcript of a cause removed according to law and as a part of said bill. What proceeding was had in said cause as to process and answers your orator is unable to state further than he has stated in his said original bill. The main purpose, however, as your orator is informed, believes, and states, was to secure the appointment of a receiver and prevent the loss of the lands which had been sold to the State for taxes, and to secure their redemption and purchase under the act of the legislature of the State of Miss. referred to in said bill. No order of the said Federal court was ever taken, as your orator is informed, believes, and states, directing the filing of the said transcript from the chancery court as of a cause removed or recognizing in any way the

transfer thereof further than the overruling of a motion to remand the cause, which, your orator is informed, believes, and states, was entered by M. S. Baldwin, one of the defendants.

4. Your orator, herewith and hereby repeating all other the allegations of his said original bill, asks that this amended bill be filed for the correction of the error contained in said original bill, —, your orator prays, may be considered together and taken as one bill in the cause.

47 5. Your orator is advised, believes, and charges that upon the face of the record the said cause was never removed from the State chancery court and is still practically pending in said court, and that the Federal court was wholly without any jurisdiction to proceed in the cause and determine the matter at issue between the parties. Your orator was no party to the cause and had no notice of the proceedings taken therein so far as to affect him in any way by the decrees entered, nor could he in any way have the same review because of the fact of not being a party to the suit he could not appeal it to the Supreme Court of the United States.

He files herewith an Exhibit "D," a copy of the petition of Byron H. Evers for the removal of said cause as Exhibit "E," and a copy of the bill filed in said Federal court by the said Watson, so far as the same may be obtained. The first page of said original bill has been lost, but your orator states on information and belief that on the said page of said bill the said Thomas Watson states himself to be a citizen of the State of Illinois, and that the defendants Phillips, Marshall, and Evers *was* alien subjects of Her Majesty Queen Victoria. Your orator herein and hereby renews and reiterates the charges in his original bill made except as herein connected, and prays, as in said bill, for relief, &c.; and in duty bound, &c.

NUGENT & McWILLIE.

EXHIBIT D.

Petition for Removal.

In the Chancery Court of De Soto County.

Be it remembered that in the chancery court of De Soto county and State of Mississippi on the 26th day of December, 1884, the following petition was filed in these words and figures, viz:

Petition for Removal.

In the Chancery Court of De Soto County, State of Mississippi.

THOMAS WATSON
vs.
BYRON H. EVERS *et al.*

Petition for removal to the district court of the United States for the western division of the northern district of Mississippi,
48 acting as a circuit court.

To the said chancery court:

Your petitioner, Byron H. Evers, respectfully shows to this honorable court that the matter in dispute in the above-entitled suit include-, exclusive of costs, the sum or value of five hundred dollars; that your petitioner at the commencing of this suit was and still is a citizen of Great Britain and an alien, and that Thomas Watson was then and still is a citizen of the State of Illinois, and that in said cause there was a separable controversy between your petitioner and the said Thomas Watson.

And your petitioner offers herewith good and sufficient surety for his entering in said district court of the United States, on the first day of next session, a copy of the record in t-is suit and for the payment of all costs that may be awarded by said district court if said district court shall hold that this suit was wrongfully or improperly removed thereto, and he prays that this honorable court proceed no further herein except to make the order of removal required by law, and to accept said surety and bond and cause the record herein to be removed into said district court of the United States in and for the western division of Mississippi; and he will ever pray.

(Signed) CALHOON & GREEN,
Att'ys for Petitioner.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Before me, James McKee, clerk of the circuit court of the southern district of Mississippi, came Byron H. Evers and made oath that the statelent- of the foregoing petition are true.

(Signed) B. H. EVERS.

Sworn to and subscribed before — this the 24th day of December, 1884, as witness my hand and the seal of said court, at Jackson, State of Mississippi.

[L. S.] (Signed) JAMES McKEE, *Clerk.*

49 Filed this the 26th dae of December, 1884, at 10.41 o'clock a. m.

R. R. WEST, *Clerk.*

And on said 26th day of December, 1884, the following bond was filed in the words and figures, viz:

Know all men by these presents that I, Byron H. Evers, as principal, and W. L. Nugent, T. A. McWillie, and S. S. Calhoon, as sureties, are held and firmly bound unto Thomas Watson in the penal sum of five hundred dollars; the payment whereof, well and truly to be made unto the said Watson, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents—

Yet upon these conditions: The said Byron H. Evers having petitioned the chancery court of De Soto county, State of Mississippi, for removal of a certain cause therein pending, wherein Thomas Watson is plaintiff and Byron H. Evers, M. S. Baldwin, George F. Phillips, and William Marshall, defendants, to the district court of the United States for the western division of the northern district of Mississippi, acting as a circuit court:

Now, if the said Byron H. Evers, petitioner as aforesaid, shall enter in the said district court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said district court of the United States if said court shall hold that said — was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this the 24th day of December, 1884.

(Signed) B. H. EVERS. [SEAL.]
WM. L. NUGENT. [SEAL.]
THOS. A. McWILLIE. [SEAL.]
S. S. CALHOON. [SEAL.]

UNITED STATES OF AMERICA, } ss:
Southern District of Mississippi, }

Before me, James McKee, clerk of the circuit court of said district, this day came William L. Nugent, Thomas A. McWillie, whose names are signed to the foregoing bond, and made oath that they are severally worth the sum of five hundred dollars in visible property subject to execution over and above liabilities and exemptions and in said district.

W. L. NUGENT.
THOS. A. McWILLIE.

Sworn to and subscribed before me this the 24th day of December, 1884.

[SEAL.] J. M. McKEE, *Clerk.*

Filed at 10.41 o'clock a. m. Dec. 26th, 1884.

R. R. WEST, *Clerk.*

I hereby certify that the foregoing six pages contain a correct transcript of all proceedings for removal of the cause from the chancery court of De Soto county, State of Mississippi, of which I am

clerk, to the district court of the United States of the western division of the northern district of Mississippi.

[SEAL.] Witness my hand and seal of said chancery court, hereto attached, this 26th day of December, 1884.

R. R. WEST, *Clerk.*

Answer and Cross-bill.

The first page of this answer & cross-bill was lost in some way; it is the answer of Thomas Watson.

M. S. Baldwin, a citizen of the State of Illinois, and against Sylvester Gwin, liquidating levee commissioner and auditor of public accounts of the State of Mississippi.

Your orator states that on the 12th of July, 1884, the said Thomas Watson filed his bill in the chancery court of De Soto county against all of the aforesaid defendants except the defendant Sylvester Gwin, W. L. Nugent, and N. T. Burroughs.

He further states that Byron Evers filed a lengthy answer to said bill, making affidavit to the same, and subsequently filed what purported to be an answer of George Frederick Phillips and William Marshall. To this answer Byron H. Evers made affidavit. Afterwards your orator filed a supplemental bill and made the defendant Sylvester Gwin a party defendant. To the supplemental bill an answer was filed in the absence of Byron H. Evers. An affidavit was made to the same by W. L. Nugent, of the solicitors of
51 Byron H. Evers, and the said Nugent filed an entry of the appearance of the said Phillips and the said Marshall, adopting the answer of the said Evers to the said supplemental bill. Upon this supplemental bill an injunction was obtained, and thereafterwards George Frederick Phillips and William Marshall filed an elaborate answer and made the same a cross-bill, setting up in said cross-bill a claim of equitable relief against your orator and their partner, Byron H. Evers, and against M. S. Baldwin.

This answer and cross-bill is attested to by the affidavit of one Charles Furber and has the name of W. P. and J. B. Harris marked to the same as solicitors, the said Furber acting as the agent and attorney-in-fact of the said Phillips and the said Marshall.

Your orator also states that the said Byron H. Evers also at a subsequent date filed an affidavit in his own behalf to the supplemental bill of your orator qualifying in some respects the affidavit of his solicitor, W. L. Nugent.

Your orator states that the said Phillips and Marshall obtained also a fiat and order of injunction upon their cross-bill against their partner, Byron H. Evers, and had given notice of the application upon their behalf for a receiver to take charge of the property. Your orator states that at this stage of the proceedings the said Byron H. Evers filed his petition for a transfer of the said cause from the chancery court of De Soto county, where the same was pending, to the court of your honor, as aforesaid, and your orator is now powerless to obtain any restraining orders or process in such

cause from the court of De Soto as aforesaid and is compelled, therefore, to apply to your honor for the same pending the transfer of said cause and the decree of your honor touching the injunction of the same.

Your orator states that the cause is pending upon its merits by transfer to your honor's court for the northern district of Mississippi as aforesaid. He further states that the suit aforesaid is a controversy over certain legal and equitable rights between your orator and the other defendants herein touching certain delta and pine lands described in the original bill in said cause and
52 the exhibits to the same, and he filed as Exhibit No. 1 to this auxiliary bill and petition the full transcript of the case from the chancery court of De Soto county, Mississippi, for the purpose of showing the full state of the controversy between the parties hereto as far as it had proceeded in that court, and he prays leave to read the same at this point in this bill for information thereof and as a part of this bill.

Your orator states that he took this course because the said defendant, Evers, has neglected to file the transcript of the cause in your honor's court, and it is necessary for your honor to be advised of the same to enable your honor to determine as to the veracity and propriety of the relief hereafter prayed.

Your orator further states that after the filing of the supplemental bill in this cause and just shortly before Phillips and Marshall obtained the injunction referred to in their cross-bill the said Phillips and the said Marshall sent Charles Furber to the United States to act as their agent relative to their lands in that suit, and the said Furber and your orator, represented by his agent, M. D. Watson, and the said M. S. Baldwin and the said Byron H. Evers met in Jackson, Mississippi, and endeavored to compromise the difference between themselves. They failed to induce the said Evers to make any arrangement of the matter, and consequently your orator, Watson, Phillips, and Marshall and M. S. Baldwin agreed among themselves as to how they would adjust their differences and reduced the same to writing. A copy of this agreement, marked Schedule No. 2, is here filed as a part of this bill, &c.

It *is* especially recognized the prior rights of your orator and of Phillips and Marshall before payment was to be made to M. S. Baldwin of any interest.

Your orator states that they consented to the proceedings for a receiver as begun by Phillips and Marshall, and the said M. S. Baldwin also consented to the same, and they were prosecuting their suit for the purpose of legally adjusting to *t*hat extent Byron H. Evers had an interest in this controversy when the transfer as aforesaid was made.

53 After the transfer your orator, Thomas Watson, also gave notice of the application for a receiver in this cause, fixing the time for making the same first at Oxford and subsequently at Jackson, Miss., at which place January 29 is named as the day for taking up said application.

Your orator further states that when the supplemental bill was

filed against the defendant Gwin your orator did not have the true facts as to the attitude of the taxes upon the lands in controversy. Since then he has ascertained the following facts and so charges the facts to be as follows:

1. All the taxes on the delta lands were paid Sylvester Gwin up to Oct., 1885, except the taxes for that fiscal year, and Sylvester Gwin gave a receipt to that effect, which is here filed, Schedule No. 3.

2. The money to pay said taxes was placed in Gwin's bank, Jackson, Mississippi, and the cashier, W. H. H. Green, entered the same upon the books of said bank to the credit of S. Gwin, and a copy of W. H. H. Green's receipts, marked No. 4, is here filed as a part of this bill.

3. The said Gwin wrote a letter, a copy being here filed as Schedule No. 5, elaborately setting out these facts. The said letter is in the handwriting of Mr. Johnston, the principal deputy in the office of said Gwin, and is duly signed by said Gwin.

4. It was with the full knowledge, consent, and approbation of the said Gwin that the said money was placed in Green's bank by Evers.

5. The said Evers at one time attempted to induce the defendant W. L. Negent to take steps to compell the necessary deeds from said Gwin, but from some cause thus far no proceedings have been instituted. A copy of the letter of the said Nugent upon this subject is here filed as Schedule No. 10 to this bill.

6. The lands were marked paid upon the books of the auditor by the said Gwin after the receipt of said money, and his books show this to be a fact.

7. When the money was deposited with Green's bank he is advised that the auditor, S. Gwin, had a private account with
54 the bank and was indebted to the bank in a very large sum, and there was no pressing reason for the said Gwin to pay the money to the treasurer, to the State of Mississippi, or to the proper recipient for the same until October, 1885, although your orator states and charges that it was in reality the duty of the said Gwin to at once get the money and at once deposit it with the treasurer of the State and not to leave it in Green's bank; that it was left in Green's bank by wilfull neglect, gross carelessness, to subserve the private interest and uses and purposes of said Gwin, to accommodate Green's bank, who held a large indebtedness against said Gwin for money due them.

Your orator is advised that it was the duty of the auditor to deliver the deeds to these lands at once, and in the event the taxes of 1885 were not paid before the last past Oct. to report the lands back to the sheriff of the proper counties for sale as delinquent lands. Had this course been done, your orator is advised that the lands would not stand as lands subject to sale or falsely claimed by the auditor, but would stand as land on which all taxes were paid except the taxes of 1885, and as to them, if sold, your orator would have 12 months from sale in which to redeem.

Your orator states that he has been informed that all the deeds

for the said lands are in fact now made out, and the names of the defendants Byron H. Evers *and are* in the auditor's possession in that State. Your orator states that Green's bank has failed, and the said S. Gwin, to escape the responsibility in which he and his bondsmen were involved in this matter, now pretends that he has never been paid for the taxes due on these lands and has refused to report them as paid and redeemed in his office, so that the same might be sold for the taxes of 1885 by the several sheriffs of the counties, but to avoid this responsibility he now claims that no payment was made to him, and that to purchase or redeem these lands it will require not only the said sum paid by Evers as aforesaid, but an extra sum of about $60.00 for taxes and damages, &c., about the same for the year- of 1885 and 1886, to redeem the same.

55 They further state that the said Evers will not order or institute any proceedings in this matter, and the said Nugent is now pressing the said Evers to assign and transfer that money which the auditor permitted to remain in Green'- bank over to the said Nugent, he, the said Nugent, saying that Evers or Phillips, Marshall and Company owe him and that he has a lien as attorney on the money; that he, the said Nugent, owes Green's bank a very large sum, and that if Evers will stick to the statement that it was never paid to Gwin, but lies to his, Evers', credit in Green's bank, and will make the transfer to him, he, the said Nugent, will use it in settlement with Green's bank and adjust it upon his fees and place it as a credit on a large debt that he owes Green's bank.

Your orator states that he, the said Evers, or Nugent have only the authority to effect this arrangement. The money was a trust fund sent exclusively to pay taxes upon the lands, the common property of all the parties hereto, and was received by the said Green, who was legally and properly authorized to receive the same, and deposited and placed exactly where he directed it to be placed. As a fact, the lands were marked as paid or redeemed upon the books in the auditor's office, and he expressly charges that the said lands had been redeemed in the auditor's office as a fact, and the said auditor, S. Gwin, has no power or legal authority to offer said land for sale to purchasers generally or to insist that any other or further money should be paid about the same as a preliminary to receiving the deeds aforesaid for the lands or applied for by Evers and as admitted to have been paid for by the said S. Gwin.

Your orator files this bill in his own behalf and the behalf of George F. Phillips and William Marshall and M. S. Baldwin, if they elect to take the benefit hereof, and hence make- them defendants, and they ask that an injunction may issue enjoining the said S. Gwin from offering said lands for sale.

They also pray that this court may compel the said S. Gwin to execute the deeds as redeemed as aforesaid, and if already executed to deliver the same to some proper custodian of title au-

56 thorized to receive the same.

For this, complaining, your orator states that if from any cause this court will not regard the money so paid into Green's bank as aforesaid, he prays that at some short day to be named he be

authorized to pay to the auditor sufficient money to redeem and discharge all the taxes on said land except the taxes and damages of the year 1895, and as to that the said auditor be required to report this delinquency to the sheriffs of the proper counties to be redeemed in twelve months as by law provided, &c., or such other relief touching all this matter of the taxes as is equitable.

In the meantime your orator prays a receiver to take possession of this land and a full discovery of the said Gwin and report to your receiver as to the taxes due about this land. Your orator states that the land that he desires to restrain the said Gwin from selling is the delta lands described as Schedule No. One to this bill.

Your orator further says that he charged in his supplemental bill that Byron H. Evers was endeavoring through some manipulation, using the machinery of the auditor's office for this purpose, to defraud your orator relative to his rights about this property.

He further states that the defendant W. L. Nugent has been long connected with the land in controversy. He was the attorney of J. and T. Green, who owned Green's bank, in a proceeding to have these lands sold through the chancery court of Hinds county, first district at Jackson, several years ago. He then represented and was the attorney of Gordon and Coffey, from whom Byron H. Evers purchased.

Subsequently, at various times through the mutations and changes of the history of the litigation about these lands, the said W. L. Nugent has at times represented, at some time- a common interest and at others a special interest, *of* some of the parties to the litigation.

Especially your orator states that the said W. L. Nugent consented to become directly interested in these lands and join in a syndicate to be organized about the development of these lands and some bank establishment growing out of the same, and
57 at the instance of the said Evers the said Nugent obtained a charter incorporating a certain British and Mississippi Freehold Land and Mortgage Company, with himself, George F. Phillips, William Marshall, and Byron H. Evers as stockholders, &c., as incorporators. Your orator refers to the act of the legislature incorporating the same, published in the Acts of 1884, page 841 of Acts of Mississippi. He also refers to a deposition which W. L. Nugent has made about this matter, a copy of which will be hereafter filed, which he prays may be taken as a voluntary statement of said W. L. Nugent about the same and vaguely shadowing forth some claim of interest in him about the matter.

He further states that, in reply to the supplemental bill in this case, the said W. L. Nugent and the said Evers claim that some large syndicate has been formed for the purchase of these lands, and that your orator's supplemental bill had thwarted the project. He prays full discovery of the nature of this syndicate, its terms and stipulations, the interest which the said W. L. Nugent and the said Evers were to derive about the same. They pray a full discovery of all the history of the foundation of this syndicate, and especially they ask what arrangement-, if any, were made to secure any right

or benefit to your orator, Watson, relative to the same. Your orator, Thomas Watson, has had no notice given to him to produce all letters and papers from W. L. Nugent and Byron H. Evers relative to this case, and he has filed an affidavit that states the true facts of the matter; that he had no letters of this character in his possession. Since this was made his attorneys in Jackson have presented him with two copies here filed as Schedule- No. 6 & 7. These exhibits are copies of letters of said Nugent to Evers and relate to a scheme to divest the State's title, which Evers controlled, in a manner which your orator, Thomas Watson, deemed at least prejudicial to his interest, and the first knowledge of the contents of these letters *were* communicated to your orator's attorney employed by George F. Phillips and William Marshall in a suit begun by them in Cincinnati.

58 Your orator also files and prays to be taken as a part of this bill, marked Schedule- No. 8 and 9, copies of two letters from Byron H. E. Evers, which he prays may be taken as a part of this bill. They further illustrate the deter*h*ination and plan which the defendant Evers was engaged in to defraud your orator by manipulating the State's title to his prejudice, as charged in his supplemental bill, a part of Schedule No. 1 to this case. They have other letters from the said Evers to M. S. Baldwin, illustrating the proposed plan to defraud your orator's rights, which *is* filed — Schedule No. 10 to this bill, and pray that the same may be taken as exhibits to the same.

The letter to M. S. Baldwin contains important information as to the status of the defendant S. Gwin as to the money received for taxes. Your orator states that he has received information that the defendant Burroughs is entering into the same negotiation for the purchase of the claim of M. S. Baldwin about this land, and he prays an injunction enjoining and restraining the said Baldwin from disposing of the same in any manner to prejudice the rights of your orator and of Phillips and Marshall about this matter. Your orator, in tender consideration, &c., pray- that the aforesaid defendants be made defendants to this bill; that subpœna issue for them and, in addition, publication be made, requiring the non-resident defendants, N. T. Burroughs, W. L. Nugent, B. H. Evers, George F. Phillips, William Marshall, and M. S. Baldwin, all take notice of this bill, as an additional *lis pendens*, asserting your orator's rights in this land, and they especially pray an injunction against the said W. L. Nugent, Byron H. Evers, and N. T. Burroughs as aforesaid, and the *a*special injunction hereto set out against said Gwin, and the necessary orders, mandates of this court, as will *a*stop the said Gwin from p-acing the title to said delta lands, being the land referred to in Schedule No. 1, to any person or persons, whereby the rights of your orators and others interested in this proceeding may be affected or injured, with the further orders of this court touching the same, &c.

In addition to this general prayer for relief, they pray that
59 all the parties to this bill be enjoined from acquiring any title in the auditor's office as planned by the defendant- W.

L. Nugent and Byron H. Evers or otherwise, and that due cognizance may be taken of the contract made between your orator and George F. Phillips and William Marshall and M. S. Baldwin *if* Dec. 15th, 1884; and as in duty bound, &c.

FRANK JOHNSTON,
JAMES R. YERGER, *Sol's.*

STATE OF MISSISSIPPI, }
Jackson, Mississippi. }

This day personally appeared before me, James McKee, clerk of the United States court for the southern district of Mississippi and a coppissioner of the United States, William Watson, the agent and attorney-in-fact of Thomas Watson, and who is personally conversant with the facts set forth in the above bill, and who, being duly sworn, on oath says that the matters and facts in said bill stated on his own knowledge are true, and those stated on information and belief he verily believes to be true.

WILLIAM WATSON.

Sworn to and subscribed before me this January 28th, 1885.
JAMES McKEE, *Clerk.*

60 *Answer and Cross-bill.*

In the Chancery Court of Sunflower County.

LEANDER C. GOODSELL }
vs. } 543.
DELTA & PINE LAND CO. *et al.* }

The joint answer of Byron H. Evers, George F. Phillips, and William Marshall, defendants, to the bill exhibited against them and others in the above-entitled cause, respectfully shows unto the court as follows:

1st. Respondents admit that on the 8th day of Nov., 1891, respondent Evers was the owner of the lands mentioned, and that he made the conveyance as charged in section 1 of complainant's bill.

2nd. Respondents have no personal knowledge of the conveyance from Baldwin to complainant. They are willing to admit the same, however.

3rd. They admit that the lands referred to in section 3 of complainant'- bill were purchased by the said Evers from one E. C. Gordon, as stated.

4th. Respondents admit that Evers borrowed the money, as stated, from Thomas Watson, and that Watson filed his bill in the chancery court of De Soto county against the parties as stated in section 4 of c'mpl't'- bill herein, and that said suit was removed to the United States court at Oxford on the application of said B. H. Evers, and that the proceedings were there had and done as stated in said section 4; but they deny that said removal and said proceedings were legal.

5th. Respondents admit the rendering of the said pretended decree on the 31st day of July, 1885, and the other allegations of said bill as stated in section 5 thereof.

6th. Respondents, further answering said bill, admit all the allegations contained in section- 6 & 7 of compl't'- bill herein.

7. Respondents admit on advice and belief the allegation in regard to the want of jurisdiction of the U. S. court to render a decree contained in section 8 of said bill, and also admit the allegation of sec. 9.

8th. Respondents have no personal knowledge and can neither admit nor deny the allegations contained in section 11 in said bill.

61 9th. Respondents admit the exceptions of the quitclaim deeds by Evers, Phillips, and Marshall, as stated in section 13 of said bill, and admit that said deeds were falsely and fraudulently procured, and that no consideration whatever was ever paid for them. They admit also that Thomas Watson had no interest in the pine lands mentioned in said bill.

And now, having answered complainant's bill, the respondents B. H. Evers, George F. Phillips, and William Marshall respectfully show to the court by their cross-bill against — and their codefendants, The Delta and Pine Land Co., William Watson, sec't'y, and William Watson individually, and Thomas Watson—

1st. That the pretended final decree rendered on the 3rd day of October, 1885, was a compromise decree, by the terms of which and the terms of the agreement on which it was based respondents in that suit were to have six months in which to pay the *same* agreed to be due Thomas Watson and which was decreed to be a charge on the land in controversy at that time. Complainants in this cross-bill expected to be able to pay and satisfy said decree by the sale of the lands to an English company to be organized under the laws of Great Britain. To accomplish this they immediately proceeded to London and begun to organize said company, in the promotion of which they expended a large sum of money, and when they had about succeeded in disposing — the lands to said company for sufficient cash to pay said decree and have a good working capital and the balance in stock and debentures the said Thomas Watson, through his agents and friends, interfered, and by creating doubts as to the titles of the lands, &c., prevented the complete organization and floating of the company and the sale of the lands. Complainants charge, therefore, that by the acts and conduct of the agents of said Thomas Watson they were prevented from complying with the agreement and satisfying said decree. Thereupon the land was sold by the commissioners.

Complainants charge on information and belief that before said sale the said Watson conspired, confederated, and colluded with other persons who wished to bid on said lands to keep them

62 from attending said sale and bidding on the lands, by which fraudulent conspiracy and collusion they did deter and prevent other bidders from being present and bidding on said land, and were thereby enabled to buy most of the delta and all of the

pine land for a mere trifle; that complainant did not know of this fraudulent conspiracy until long after said sale had been confirmed by the court and not until after the statutory time for appealing had elapsed.

Complainants charge that Thomas Watson prior to said sale by the said commissioners had no claim to or interest in the said pine land; that he had not advanced one cent in their purchase, and that at a fair and honest sale the delta lands would have sold for more than enough to satisfy said decree.

3rd. That in 1886 the said Thomas Watson, recognizing the fact that the complainants in this cross-bill and M. S. Baldwin still had an interest in said lands, sent his agent to London armed with a full power of attorney to represent him, who proposed the organization of another company to whom to sell the said lands and proposed to give each of the complainants in this cross-bill and to one Henry Lafour, who represented M. Baldwin, each a certain proportion of the capital stock of said company when fully organized and the stock issued; that *finding* the negotiations for the sale of said lands to the English company the agent and attorney-in-fact of Thomas Watson and the Delta and Pine Land Co. approached each of the complainants to this cross-bill and the said Henry Lafour, agent for M. S. Baldwin, and asked them to execute a quitclaim deed to their interest in said land to his principal, the said Thomas Watson; said agent at the time stated that said deeds were wanted solely for the purpose *for the* facilitating the negotiations for the sale of the said lands to said English company, and said to them that said deeds would be lodged in trust with Walter Webb and Company, of 22 Queen Victoria street, London, the solicitors of said English company, and did then and there promise each of said parties that if no sale of said land to said English company resulted that the said deeds should be inoperative and void, and that the deeds
63 should be returned to the grantors. Nothing, however, was paid or received in consideration for said deeds, said company was not organized, no stock was issued, and said lands were not sold, yet said agent, instead of lodging the said deeds with the said Webb & Company in trust, as he had promised he would do, *he* abandoned all efforts looking to the promotion of said company, and took said deeds and brought or sent them *them* to Mississippi and had them recorded in the several counties where the lands are situated. Complainants charge that said deeds are wholly without consideration; that they were obtained by false pretenses, misrepresentations, and fraud, and are void, and demands that respondent Watson be required to produce the said original quitclaim deeds in court.

4th. Complainants charge that the U. S. court at Oxford was wholly without jurisdiction to entertain the said bill or to render the said final decree therein, for this, to wit, the complainants therein, Thomas Watson, as shown by his said bill, was a citizen of the United States and a resident of said city of Chicago, in the State of Illinois, and Mathew S. Baldwin, one of the defendants and a material defendant in said cause, *and* likewise a citizen of the

United States and a resident of said city of Chicago, in the State of Illinois. Complainants are advised and believe and charge the law to be that said court was wholly without jurisdiction to entertain a litigation to settle a controversy or dispute between citizens of the same State. Said State court was not divested of its jurisdiction and the Federal court invested with jurisdiction in said cause because the same was improperly and illegally removed from said State court on the application of an alien.

5th. Complainants charge that said Delta & Pine L. Company had full notice of the fraudulent manner in which and the means by which the said Thomas Watson secured his pretended title to said lands, and that the said Delta and Pine Land Company is not an innocent purchaser without notice for a valuable consideration.

6th. Complainants further charge that, although said Watson and said Delta & Pine Land Co. are fraudulently in possession of all of said delta & pine lands, they still claim a large sum against
64 these complainants as due on said pretended decree, more, really, than the said Watson originally advanced on said lands. The collection of said sum they have attempted to enforce in the English courts.

7th. Complainants charge on information and belief that said Watson and said Delta & Pine Land Co. have realized large sums of money on the sale of a portion of said lands and lumber, &c., enough, if not more than enough, to pay in full their debt and interest.

The premises considered, complainants pray that the said Thomas Watson and the Delta and Pine Land Co. and William Marshall, individually and as secretary of said company, be required to answer cross-bill under oath; that the said Watson and the Delta & Pine Land Co. be required to render an account under oath of all lands and timber sold by them, to whom sold, the sum received and the date the same was received, and the amount of taxes paid on said lands since the sale by said commissioners; that said sum, after paying the taxes, be credited on the amount due on said decree, and if, after paying said decree and interest, there is a balance it, together with all the lands now and still in possession of said defendants, be divided between the complainants in this cross-bill and the other parties to the said original suit as their interest may appear, and that the said Watson and the said Delta and Pine Land Company be decreed to be without title to said lands; that said quitclaim deeds be cancelled, *as* if it should appear as if there is still a balance due them on said decree may they be decreed to be only mortgagees for the sum—the sum so found to be due.

Or if mistaken in the relief prayed for, then for such and further relief as in equity the nature of the case they be entitled; and, as in duty bound, etc.

JOHN McCASKILL,
Sol. for Complainants.

65 *Demurrer.*

THE STATE OF MISSISSIPPI:

Chancery Court of Sunflower County, May Term, 1893.

LEANDER C. GOODSELL
vs. } 543.
DELTA & PINE LAND CO.

And now comes the defendants, The Delta and Pine Land Company, William Watson, and Thomas Watson, by their solicitors, and, not waiving but reserving all exceptions to the many errors and inaccuracies in said bill and not confessing the same, demur to said bill and say that said bill fails to show, entitling the complainant to any relief, and assigns as grounds of demurrer the following:

1st. The bill does not show that the U. S. court that rendered the decree assailed by the bill did not have full jurisdiction of said cause in which the decree was rendered.

2nd. There are not sufficient facts in respect to the jurisdictional questions involved in said former suit set out in the bill to enable this honorable court to decide whether the U. S. court did or did not have jurisdiction.

3rd. The decision of the U. S. court on the question of its own jurisdiction is *prima facie* a correct decision, and there is nothing averred in the bill to show that it was an erroneous decision.

4th. This court has no power to review the decision of the Federal court on the Federal question of its own jurisdiction.

5th. The bill shows on its face and by its exhibits that the Federal court did have jurisdiction; that there was no controversy between Watson, the complainant, and Baldwin, one of the defendants; that the whole controversy was between the other parties.

6th. The decree now assailed was in effect an agreement between the parties acted upon by all and fully and completely executed in all respects according to the agreement of the parties. Since the same these defendants have been paying taxes, and Mr. Watson sold the lands to the Delta & Pine Land Company upon the faith of said agreement executed by consent of and with the full
66 knowledge and approval of all parties to it, and this complainant is estopped in equity from attempting to rescind and vacate said agreement.

7th. Any decree vacating said sale and agreement would be unjust and inequitable, and the complainant is not entitled to any relief after so long a delay and acquiescence.

8. It appears that other lands covered by the consent decree were sold to other parties who are not included in this suit, and no decree vacating said decree and sale can be made in any event for the reason that the *status quo* cannot be restored.

9. The bill is inconsistent and bad and not maintainable, in this, that the complainant proposes to hold to a part of the consent ar-

rangement and reject another part. It seeks to set aside the execution of the consent decree, the sale, and purchase and to enforce the consent decree, which he insists is void.

10. It would be unjust and inequitable that the complainant should have any relief.

11. The bill shows that Thomas Watson acquired legally by consent of all parties in the former suit the legal title held by Stewart.

12. And for other causes to be shown on the hearing of this demurrer.

FRANK JOHNSTON,
Sol. for the Delta & Pine Land Co.

I certify that in my opinion this demurrer is well taken.

FRANK JOHNSTON.

Agreement to Argue Case in Vacation.

In the Chancery Court of Sunflower County, Mississippi.

LEANDER C. GOODSELL
vs.
DELTA & PINE LAND CO. *et al.*

It is agreed that this cause shall be submitted at this term of court on the bill, amended bill, exhibits, and the demurrer to the bill as amended.

That the same shall be argued in vacation by counsel in Greenville at a time to be indicated by the chancellor or fixed by
67 agreement of counsel; that a decree may be entered in vacation in accordance with the decision of the chancellor as of term time, and that an appeal may be taken therefrom.

It is agreed that at the argument of the demurrer, if the same is overruled or if counsel prefers, that a plea may be presented to the chancellor setting up the matter pertaining to the jurisdiction in the former cause, and that the same may be heard on its sufficiency or that a plea and the demurrer may be heard together and decree as may be directed may be entered in vacation as in term time and from which appeals may be taken.

If a plea is presented, then a copy of such proposed plea will be handed to the solicitors for the complainants five days before the argument.

May 8th, 1893.

NUGENT & McWILLIE,
Sol's for Compl't.
FRANK JOHNSTON,
Sol. for Delta & Pine Land Co., William Watson, & Thomas Watson.

Final Decree.

Chancery Court of Sunflower County. In Vacation.

LEANDER C. GOODSELL
vs. } 543.
DELTA & PINE LAND CO. *et al.*

This cause having been submitted at a former term of court by agreement of parties on the demurrer of the Delta & Pine Land Company, Thomas Watson, and William Watson to the original and amended bill- of the complainant, to be agreed (argued) in vacation, and the same having been agreed (argued) by counsel for said defendants as well as by counsel for the complainant on the 12th day of October by agreement of counsel, and the same having been taken under advisement by the chancellor, and the chancellor being of the opinion that the demurrers are well taken, it is now accordingly ordered, adjudged, and decreed that said demurrer be, and the same *are* (amend) hereby, sustained; and the complainant now declining to answer his bill, it is further ordered, adjudged, and decreed that
68 said original and amended bill- be, and the same are hereby, dismissed at the cost of the complainant, to be taxed, and for which execution may issue, and that the cross-bill be, and the same is hereby, dismissed. Ordered, adjudged, and decreed this the 20th day of February, 1894.

W. R. TRIGG, *Chancellor.*

Appeal Bond.

In the Chancery Court, Sunflower County, Mississippi.

LEANDER C. GOODSELL
vs.
DELTA & PINE LAND CO. *et al.*

Know all men by these presents that we, Leander C. Goodsell, William L. Nugent, and Thomas A. McWillie are held and firmly bound unto The Delta & Pine Land Co., defendant in the above-entitled cause, in the penal sum of five hundred dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed this 15th June, A. D. 1894.

The condition of this obligation is such that whereas the above-bound Goodsell has applied for and obtained an appeal to the next term of the supreme court from a decree of said chancery court in said cause sustaining the demurrer to the bill filed therein and dismissing the same:

Now, if the said Goodsell shall pay all the costs of the appeal in case the decree applied for be affirmed, then this obligation to be void; otherwise to remain in full force and effect.

LEANDER C. GOODSELL,
By NUGENT & McWILLIE.
W. L. NUGENT.
T. A. McWILLIE.

69 *Petition for Appeal.*

In the Chancery Court of Sunflower County.

To the clerk of the said chancery court:

The undersigned, feeling aggrieved by the decree of said court in said cause sustaining the demurrer to and dismissing the bill, pray- an appeal therefrom to the next term of the supreme court in this State and herewith tender- the bond required by law.

And, as in duty bound, &c.

LEANDER C. GOODSELL,
By NUGENT AND McWILLIE.

Filed and approved this the 22nd day of June, 1894.
J. Y. WALTON, *Clerk.*

Certificate of Clerk.

STATE OF MISSISSIPPI, }
County of Sunflower. }

I, J. Y. Walton, clerk of the chancery court in and for the county and State aforesaid, do hereby certify that the above and foregoing pages, from 1 to 80, incl., contain a true and perfect transcript of the record in the cause of Leander C. Goodsell *vs.* The Delta and Pine Land Company, No. 543, as fully as the same appears on file in my office. I further certify that the bond hereto attached is the original appeal bond filed in said cause.

Given under my hand and seal of office, at Indianola, Miss., this the 10th day of Sept., A. D. 1894.

J. Y. WALTON, *Clerk.*

The foregoing record endorsed as follows:

No. 7829. Filed September 22nd, 1894. Oliver Clifton, clerk, by C. C. Campbell, D. C.

70 And on the 30 day of October, 1894, the following order was made and entered in said cause:

LEANDER C. GOODSELL }
v. } 7829.
DELTA & PINE LAND CO. *et al.* }

Judge Whitfield being disqualified by reason of interest in the subject-matter of this suit, by agreement of counsel, Mr. W. R. Harper

was selected to preside in his stead; whereupon the case was argued orally by Mr. W. L. Nugent for appellant and Mr. Frank Johnston for appellees, and submitted on briefs by Mess. Nugent & McWillie for appellant and Mr. Frank Johnston for appellees.

And on the 26 day of November, 1894, the following opinion was delivered and filed, to wit:

LEANDER C. GOODSELL
v. } 7829.
DELTA & PINE LAND CO.

HARPER, special judge, delivered the opinion of the court:

In November, 1881, Byron H. Evers conveyed an undivided one-fourth interest in certain lands located in this State to M. S. Baldwin. In July, 1884, Thomas Watson, who had furnished Evers the money to purchased these lands, exhibited his bill in the chancery court of De Soto county to fix a trust thereon for the money so advanced. In this bill the complainant Watson is stated to be a citizen of the State of Illinois; the defendants, Evers, Phillips, and Marshall are stated to be aliens, and the defendant M. S. Baldwin is stated to be a citizen of the State of Illinois. A supplemental bill was subsequently filed making Sylvester Gwin, auditor of public accounts of Mississippi, a party defendant. The defendants Phillips and Marshall answered, making the same a cross-bill, in which they prayed for relief against their codefendants Evers and Baldwin. It seems that the other defendants also presented answers, but the full nature of these answers is not shown.

On Dec. 26th, 1884, Evers presented his petition, with a bond annexed, to the chancery court of De Soto county, praying a removal of the cause to the district court of the United States for the
71 northern district of Mississippi. In this petition he alleged that he was at the commencement of that suit and still is an alien and citizen of Great Britain, and that Thomas Watson was then and still is a citizen of the State of Illinois, and that a seperable controversy between him and Watson was presented in that case. Evers, after having filed this petition and bond for removal, took no further steps looking to that end. Thereupon, on Jan'y 3, 1885, Thos. Watson, by leave of the Federal court, appeared and exhibited an ancillary bill, in which it was stated that Evers had refused or failed to file in that court a transcript of the record of proceedings in the State court in the case of Watson *v.* Evers *et al.*, for which he had prayed a removal, and for that reason a copy of such record was attached to the ancillary bill for the purpose, as alleged, of showing the full status of the parties thereto. A motion was then made by M. S. Baldwin, one of the defendants, to remand the cause to the State court for want of jurisdiction in the Federal court. This motion was overruled, and the court proceeded with the cause in due order.

On July 31, 1885, an interlocutory decree was entered, in which the rights of all the parties to the suit, except Evers, are stated to

have been determined in accordance with the terms of an agreement entered into by such parties on Dec. 15, 1884, a date previous to the filing of the petition for removal.

On Oct. 3, 1885, a final consent decree was entered in the case, fixing the rights of all the parties thereto and ordering a sale of the lands in question. A few days thereafter M. S. Baldwin conveyed all his interests in the lands to one Leander C. Goodsell. At the sale of the lands under the decree Thos. Watson became the purchaser, and he afterwards conveyed them to the Delta and Pine Land Co.

In March, 1893, Leander C. Goodsell exhibited this bill in the chancery court of Sunflower county, setting out the foregoing facts and annexing as exhibits certain parts of the proceedings had in the case of Watson *v.* Evers *et al.*, but failing to annex other
72 parts, such as the several bills and answers.

This bill prays that defendant's title acquired through the sale under the consent decree in the Federal court be annulled, and that said decree be held for naught, with other prayers not necessary to state. The defendant demurred to the bill. The demurrer was sustained, and the complainant appealed.

Opinion of the Court.

It is contended here by the appellant that the case of Watson *v.* Evers *et al.* was never properly before the Federal court. But this question must depend upon whether the case was or was not a removable cause, since, if removable, the instant Evers filed his petition and bond the jurisdiction of the State court ceased and that of the Federal court attached. Thereafter it was the right of the complainant, either with or without leave of the Federal court, to have the whole cause, either transcript or otherwise, brought to the attention of that court. Anderson *vs.* Cappleton, 32 Fed. Rep., 855. Otherwise a defendant by filing a petition and bond for removal might indefinitely postpone action in both courts. If the cause was not removable, of course the whole proceeding was ineffective.

Whether the cause of Watson *v.* Evers *et al.* was removable depends upon the construction of the act of Congress of March 3rd, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes." It has been held by the Supreme Court of the United States in the case of King *v.* Cornell, 106 U. S., 395, that under this act when a citizen of a State sues jointly a citizen of the same State and an alien that the latter cannot remove the cause from the State to a Federal court, although the controversy may be seperable. In the case at bar the petition for removal showed that Watson, a citizen of Illinois, sued Baldwin, a citizen of Illinois, and
73 Evers, an alien. Therefore, although the petition alleged that there was a separate controversy between Watson and Evers, it did not on its face present such a case as entitled Evers to a removal; but the Supreme Court of the United States, in construing this same act of 1875 in the removal cases, U. S. Rep., 468,

say, "This we understand to mean that when the controversy about which a suit in the State court is brought is between citizens of one or more States on one side and citizens of other States on the other side, either party to the controversy may remove the suit to the circuit court without regard to the position they occupy in the pleadings as plaintiffs or defendants. For the purposes of removal the matter in dispute may be ascertained and the parties to the suit arranged on opposite sides of that dispute. If in such arrangement it appears that those on one side are all citizens of different States from those on the other the suit may be removed. Under the old law the pleadings only were looked at, and the rights of the parties in respect to a removal were determined solely according to the position they occupied as plaintiffs or defendants in the suit. Under the new law the mere form of the pleadings may be put aside, and the parties placed on different sides of the matter in dispute according to the facts. This construction of that act seems reasonable and is binding on this court. It would hardly be just to permit a party to be deprived of a substantial right under the Constitution and laws by a mere trick of pleading for which the methods of procedure in equity offer so many facilities. See also Arapahoe County *vs.* K. C. R. R. Co., 4 Dillon, 277.

Therefore when the Federal court came to consider the motion of Baldwin to remand the cause it was its right and duty to look not alone to the face of the petition for removal, but to all the pleadings and proceedings, and if such court was of the opinion that there was no substantial controversy between the defendant Baldwin and the complainant, Watson, and after having arranged the several parties to the suit according to the real nature of the controversy disclosed by the facts and the record it found all the
74 parties seeking common cause against the alien, Evers, then Evers was entitled to have his cause heard in the Federal court, and the motion of Baldwin to remand ought to have been denied. Bondurant *vs.* Watson, 103 U. S., 285.

We have no means of knowing from the record here how the Federal court come to its conclusion in denying the motion to remand; but such denial was had, and amounts to a judgment of that court on the question of jurisdiction. It is well settled that all Federal courts are courts of limited jurisdiction, and in a direct attack on their judgment on appeal such a state of case must be made to appear, not necessarily in the judgment, but somewhere in the record, as will bring the particular cause clearly within the jurisdiction of such courts; but we have not been able to find where it has ever been held that any one of the Federal courts are courts of inferior jurisdiction in the sense that unless all jurisdictional facts appear on the face of their proceedings and judgments such proceedings and judgments are null and void whenever and however attacked. If this were a case of a direct attack on appeal we could not positively affirm that the judgmenton the motion to remand was even erroneous, because the pleadings and facts that made up the record before the Federal court are not fully presented to us. But in this collatteral attack, which from the nature of the case is

the only kind of an attack that can ever be made in a State court on the judgment of a Federal court, it must be shown from the record itself affirmatively that under no state of case therein disclosed could the Federal court have had jurisdiction. This the record in this suit fails to do. So far as we are able to know, the facts set out in the pleadings themselves may have shown a removable case. Complainant's bill alleges that Baldwin was an indispensible party, but it is not shown by sufficient facts, nor even alleges, that Baldwin was an indispensible party, who had a substantial controversy with Watson, and the facts set out in the interlocutory decree would seem to mean that if Watson had ever had a controversy with any of the defendants except Evers that such controversy had been settled by some sort of an agreement made
75 before the petition for removal was filed. Under such circumstances it seems to us that we are bound by the judgment of the Federal court as to its jurisdiction. Therefore we hold that the decree of the Federal court is valid and binding on all the parties and privies thereto, and the judgment of the court below is affirmed.

76 Supreme Court of Mississippi.

And on the 26th day of November, 1894, a day of the regular October term, A. D. 1894, of the said supreme court, the following final decree was rendered by said supreme court, to wit:

LEANDER C. GOODSELL
v. } 7829.
DELTA & PINE LAND CO. *et al.*

This cause having been submitted on a former day of this term on the record herein from the chancery court of Sunflower county, and this court having sufficiently examined and considered the same, and being of opinion that there is no error therein, doth order, adjudge, and decree that the decree of said chancery court rendered in this cause on the 20th day of February, 1894, be, and the same is hereby, affirmed, and that the appellant and Wm. L. Nugent and T. A. McWillie, sureties, do pay the costs of this appeal, to be taxed, &c.

And on the 2nd day of March, 1895, the following order was made by said supreme court, to wit:

LEANDER C. GOODSELL
v. } 7829.
DELTA & PINE LAND CO.

Ordered that this cause be continued on the suggestions of error filed herein.

And on the 26th day of March, 1895, the following opinion on the suggestion of error was delivered, to wit:

LEANDER C. GOODSELL
v.
DELTA & PINE LAND CO. } 7829.

By COOPER, *C. J.:*

We have carefully considered the suggestions of error made by appellant, and remain satisfied with the opinion heretofore delivered.

In Evers *v.* Watson, in which case we have been furnished with a manuscript opinion of the Supreme Court of the United States, the decree herein assailed seems to have been attacked by other parties thereto by original bill in the court in which it was rendered, and from a decree dismissing that bill an appeal was prosecuted to the Supreme Court of the United States.

77 The opinion of that court affirming the decree of the lower court proceeds along the precise line of our opinion heretofore delivered.

We have not decided, as counsel assumes, that an alien defendant, having a separable controversy, may remove a cause from the State to the Federal court. We have decided only that upon the facts stated it is not made to appear "beyond controversy that upon the record the court could not have had jurisdiction," and this is given as the test by the supreme court for the determination of the fact of want of jurisdiction. Evers *v.* Watson, *supra.*

Some agreement seems to have been entered into between the other parties to the record before the application by Evers to remove the cause was made. His bond for removal was dated December 24th, 1884. From the recitals of an interlocutory decree made in the cause in the Federal court it appears that all the other parties, plaintiff and defendant, had by an agreement of date December 15th, 1884, arranged for a settlement of all matters involved between them and probably thereafter made common cause against him. The whole record suggests that while there may have been some dispute between the other parties in reference to their respective interests in or claims upon the subject-matter of litigation, all claimed adversely to Evers, or, rather, that he asserted title as against all other parties, while they claimed that he held as trustee for them. By an arrangement of the parties, according to their real interest, all others may have been complainants and Evers the sole defendant. In this condition of the record Evers could have removed the cause, not as an alien having a separable controversy from his co-defendants, but as one of the parties (being sole defendant) within the meaning of the first clause of section 2 of the act of 1875.

A reargument is denied.

78 And on the 26th day of March, 1895, the following final order on the suggestions of error was made by said supreme court, to wit:

LEANDER C. GOODSELL
v.
DELTA & PINE LAND CO. *et al.* } 7829.

This cause having been continued from the last term of this court on suggestions of error, and the court, having sufficiently considered the same, doth order that said suggestions of error be, and the same are hereby, overruled and denied.

79 UNITED STATES OF AMERICA,
State of Mississippi.

To the Hon. Tim. E. Cooper, chief justice of the supreme court of the State of Mississippi:

The petitioner of Leander C. Goodsell respectfully shows to your honor that in a certain cause in this court, wherein your petitioner is appellant and Delta and Pine Land Company and others are appellees, on appeal from a decree of the chancery court was this day finally affirmed; and petitioner avers that in said suit and in the proceedings on appeal there was drawn in question the construction, meaning, and effect of an act of Congress of the United States entitled "An act to determine the jurisdiction of the circuit court of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875, and the title, right, privilege, and immunity claimed by petitioner thereunder in this, that the cause in the bill mentioned was not a removable cause at all, as affirmatively shown by the record, and was never in law or fact, as averred in the bill, removed from the State to the Federal court, so that the State court never lost and the Federal court never acquired any jurisdiction thereof, and all its acts touching the said cause were *coram non judice*, and the decision of the supreme court of Mississippi was against the said right, title, privilege, and immunity asserted by petitioner and in favor of the said jurisdiction of the said Federal court, which never in law or in fact attached; and the petitioner further avers that in this cause is involved the question as to whether, on the facts shown by the bill and exhibit thereto attached, the district court of the United States for the northern district of Mississippi even acquired jurisdiction of the cause therein mentioned of Thomas Watson *v.* Byron H. Evers *et al.* for any purpose, your petitioner claiming that it did not acquire jurisdiction, and that his title deprived from M. S. Baldwin, one of the parties to the said controversy prior to the sale of the lands under the pretended decree in said cause, was not at all affected by the proceedings had in and by the said district court of the United States, and the appellees insisting that its jurisdiction attached because of the proceedings had for removal by Byron H.
80 Evers, one of the alien defendants to the bill originally brought in the State court, who exhibited his separate petition therefor on the ground of a separable controversy in said cause, entitling him to such removal; and your petitioner further alleges that by and under the judgment of the said supreme

court of Mississippi, being the highest court of said State in which judgment in said suit can be had, and its decision being against the right and claim specially set up by the petitioner in his said suit, he is aggrieved thereby and prays a writ of error, with citation, returnable to the Supreme Court of the United States on the second Monday of October next; and, as in duty bound, he will ever pray, etc.

LEANDER C. GOODSELL,
By NUGENT & McWILLIE, *Att's.*

The writ of error applied for in this case is denied for the reason that there is no Federal question involved.

March 26, 1895.

TIM. E. COOPER,
Chief Justice of the Sup. Court of Mississippi.

Filed March 26, A. D. 1895.

Endorsement: Filed March 26, 1895. Oliver Clifton, clerk, by C. C. Campbell, D. C.

81 In the Supreme Court of Mississippi.

LEANDER C. GOODSELL
vs.
DELTA & PINE LAND COMPANY. } 7829.

To the hon. justice- of the Supreme Court of the United States:

The petitione*r* of Leander C. Goodsell respectfully represents to your honor- as follows:

1. That on the 26th of March, 1895, he presented to the chief justice of the supreme court of Mississippi his petition in the above cause for a writ of error therein to the Supreme Court of the United States in the words and figures following:

UNITED STATES OF AMERICA,
State of Mississippi.

To the Hon. Tim. E. Cooper, chief justice of the supreme court of the State of Mississippi:

The petition of Leander C. Goodsell respectfully shows to your honor that in a certain cause in this court, wherein your petitioner is appellant and Delta & Pine Land Company and others are appellees, on appeal from a decree of the chancery court of Sunflower county, rendered on the 28th day of February, A. D. 1894, against petitioner, the judgment of the chancery court was this day finally affirmed; and petitioner avers that in said suit and in the proceedings on appeal there was drawn in question the construction, meaning, and effect of an act of Congress of the United States entitled "An act to determine the jurisdiction of the circuit court- of the United States and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875, and the

title, right, privilege, and immunity claimed by petitioner thereunder, in this, that the cause in the bill mentioned was not a removable cause at all, as affirmatively shown by the record, and was never in law or fact, as averred in the bill, removed from the State to the Federal court, so that the State court never lost and the Federal court never acquired any jurisdiction thereof, and all its acts touching the said cause were *coram non judice*, and the decision of the supreme court of Mississippi
82 was against said right, title privilege, and immunity asserted by petitioner and in favor of the jurisdiction of the said Federal court, which never in law or in fact attached; and the petitioner further avers that in this cause is involved the question as to whether, on the facts shown by the bill and the exhibits thereto attached, the district court of the United States for the northern district of Mississippi ever acquired jurisdiction of the cause therein mentioned of Thomas Watson *v.* Byron H. Evers *et al.* for any purpose, your petitioner claiming that it did not acquire jurisdiction, and that his title deprived from M. S. Baldwin, one of the parties to the said controversy, prior to the sale of the lands under the pretended decree in said cause was not at all affected by the proceedings had in and by the said district court of the United States, and the appellees insisting that the jurisdiction attached because of the proceedings had for removal by Byron H. Evers, one of the alien defendants to the bill originally brought in the State court, who exhibited this separate petition therefor on the ground of a separable controversy in said cause entitling him to such removal; and your petitioner further alleges that by and under the judgment of the said supreme court of Mississippi he has been deprived of his property without due process of law; and petitioner further avers that the said supreme court of Mississippi being the highest court of said State in which judgment in said suit can be had, and its decision being against the right and claim specially set up by petitioner in his said suit, he is aggrieved thereby and prays a writ of error, with citation, returnable to the Supreme Court of the United States on the second Monday of October next; and, as in duty bound, he will ever pray, etc.

LEANDER C. GOODSELL,
By NUGENT & McWILLIE, *Att'ys.*

And on the same day the said chief justice endorsed on said petition as follows:

The writ of error applied for in this case is denied for the reason that there is no Federal question involved.
March 26th, 1895.

TIM. E. COOPER,
Chief Justice of the Sup. Court of Mississippi.

Filed March 26th, A. D. 1895.

2. The facts as stated in petitioner's bill exhibited in the chancery court of Sunflower county, Mississippi, are succinctly stated as fol-

lows: On November 8, 1881, Byron H. Evers, of the city of London, England, was the owner of the lands referred to in the bill,
83 and on that day conveyed by deed, duly acknowledged and recorded, a one-fourth interest therein to Mathew S. Baldwin, who, on October 7, 1885, conveyed his said interest to petitioner by deed, duly acknowledged and recorded.

Thomas Watson, then a citizen of Chicago, Illinois, claiming some interest in or charge upon said lands, on July 12, 1883, exhibited his bill in the chancery court of De Soto county, Mississippi, against Mathew S. Baldwin, a citizen of Chicago, Illinois, and George F. Phillips, William Marshall, and Byron H. Evers, all of whom, as alleged in his bill, were alien subjects of Her Majesty Queen Victoria of England. Answers were filed, and the said Phillips and Marshall exhibited a cross-bill therein against said Evers and Baldwin. At this stage of the cause and on December 26th, 1884, said Evers presented to the said chancery court of De Soto county his petition for removal and bonds in the words and figures following, to wit:

Petition for Removal.

In the Chancery Court of De Soto County.

Be it remembered that in the chancery court of De Soto county and State of Mississippi on the 26th day of December, 1884, the following petition was filed in these words and figures, to wit:

Petition for Removal.

In the Chancery Court of De Soto County, State of Mississippi.

THOMAS WATSON
vs.
BYRON H. EVERS *et al.*

Petition for removal to the district court of the United States for the western division of the northern district of Mississippi, acting as a circuit court.

To said chancery court:

Your petitioner, Byron H. Evers, respectfully shows to this honorable court that the matter in dispute in the above-entitled suit includes, exclusive of costs, the sum or value of five hundred dollars; that your petitioner at the commencing of this suit was and still is a citizen of the State of Great Britian and an alien, and that Thomas Watson was and still is a citizen of the State of Illinois, and that in said cause there is separable controversy between your petitioner and the said Thomas Watson, and your petitioner offers herewith bond, with good and sufficient surety, for his entering in said district court of the United States on the first day of next session a copy of the record in this suit and for the payment

of all costs that may be awarded by said district court if said
84 district court shall hold *if* this suit was wrongfully or improperly removed thereto, and he prays that this honorable court proceed no further herein except to make the order of removal required by law, and to accept said surety and bond and cause the record *the record* herein to be removed to said district court of the United States in and for the western division of the northern district of Mississippi; and he will ever pray.

(Signed) CALHOUN & GREEN,
Att'ys for Petitioner.

UNITED STATES OF AMERICA, }
Southern District of Mississippi. }

Before me, James McKee, clerk of the circuit court of the southern district of Mississippi, came Byron H. Evers and made oath that the statements of the foregoing petition are true.

(Signed) B. H. EVERS.

Sworn to and subscribed before — this the 24th day of December, 1884, as witness my hand and the said seal of the said court, at Jackson, State of Mississippi.

[L. S.] (Signed) JAMES McKEE, *Clerk.*

Filed this the 26th day of December, 1884, at 10.41 o'clock a. m.

R. R. WEST, *Clerk.*

And that on the said 26th of December, 1884, the following bond was filed in the words and figures following, viz:

Know all men by these presents that *I*, Byron H. Evers, as principal, and W. L. Nugent and T. A. McWillie and S. S. Calhoun, as surities, are held and firmly bound unto Thomas Watson in the penal sum of five hundred dollars; the payment whereof, well and truly to made unto the said Watson, his heirs and assigns, we bind ourselves or our heirs, representatives, and assigns, jointly and severally, firmly by these presents—

Yet upon these conditions: The said Byron H. Evers having petitioned the chancery court of De Soto county, State of Mississippi, for removal of a certain cause therein pending, wherein Thomas Watson, — plaintiff and Byron H. Evers, M. S. Baldwin, George S. Phillips, and William Marshall, defendants, to the district court of the United States for the western division of the — of Mississippi, acting
85 as a circuit court:

Now, if the said Byron H. Evers, petitioner as aforesaid, shall enter in the said district court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said district court of the United States if said court shall hold that said — was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness *my* hands and seals this the 24th day of December, 1884.

(Signed) B. H. EVERS. [SEAL.]
WM. L. NUGENT. [SEAL.]
THOS. A. McWILLIE. [SEAL.]
S. S. CALHOUN. [SEAL.]

UNITED STATES OF AMERICA,
Southern District of Mississippi, } *ss:*

Before me, James McKee, clerk of the circuit court of the said district, this day came William L. Nugent, Thomas A. McWillie, whose names are signed to the foregoing bond, and made oath that they are severally worth the sum of five hundred dollars in visible property subject to execution over and above liabilities and exemptions and in said district.

W. L. NUGENT.
THOMAS A. McWILLIE.

Sworn to and subscribed before me this the 24th day of December, 1884.

[SEAL.] J. M. McKEE, *Clerk.*

Filed at 10.41 o'clock a. m. Dec. 26th, 1884.

R. R. WEST, *Clerk.*

I hereby certify that the six foregoing pages contain a *a* correct transcript of all proceedings for removal of the cause from the chancery court of De Soto county, State of Mississippi, of which I am clerk, to the district court of the United States of the western division of the northern district of Mississippi.

[SEAL.] Witness my hand and seal of the said chancery court, hereto attached, this 26th day of December, 1884.

R. R. WEST, *Clerk.*

86 No order for the removal of said cause from said chancery court was ever made by the State court, nor was the bond tendered ever approved by said court. The record of said cause in said State court was never filed by any one in the Federal court. Nevertheless the said Watson afterwards, by leave of the Federal court, claimed that the cause had been moved by the operation of law; exhibited in said cause an amended bill, stating himself to be a citizen of the State of Illinois, against Mathew S. Baldwin, a citizen of the same State, and the said Phillip-, Marshall, and Evers, stating them therein to be aliens, subjects of Her Majesty Queen Victoria of England. A motion to remand the cause to the State court by the said Baldwin was overruled. On the face of the original bill in the State court and the amended bill in the Federal court it appeared that the complainant Watson and the defendant Baldwin were citizens of the State of Illinois, and Phillips, Marshall, and Evers were aliens, subjects of Queen Victoria. Petitioner was not a party to the said proceeding in said Federal court.

3. Petitioner charged in his bill that the record in the cause of

Watson *v.* Baldwin & others showed affirmatively that said cause was not removable under the act of Congress, and that the said cause was never removed in law or in fact; that the State court never lost nor did the Federal court acquire jurisdiction, and that all the acts of the Federal court in the controversy were *coram non judice* and void. The chancery court of Sunflower county sustained a demurrer to petitioner's said bill and dismissed the same. The decree of the said chancery court was affirmed by the supreme court of Mississippi March 26, 1894, and your petitioner filed thereto suggestions of error, which were by the said supreme court overruled March 26th, 1895, at which date petition-'s said cause was finally disposed of by said supreme court of Mississippi. The property in controversy is worth more than ten thousand dollars. Thomas Watson purchased the same under decree of the Federal court in said cause, and the defendants to petitioner's bill is not a *bona fide* purchaser from him.

4. Petitioner further states that the decision of the supreme court of Mississippi was against the right, title, privilege, and immunity asserted by petitioner and in favor of the jurisdiction of the said Federal court and against the right and claim set up by petitioner in his bill, and by said decree he has been dispossessed of his property without due process of law; that there is involved in
87 said cause a Federal question of large importance, to wit, the question as to whether the Federal court ever had jurisdiction of the case of Watson *v.* Baldwin & others, and petitioner is aggrieved by the decision complained of. In view of the fact that the supreme court of Mississippi is the highest court in said State in which judgment in said cause can be had and his petition for writ of error shown as refused, petitioner prays a writ of error thereto, with citation, returnable to the next term of the Supreme Court of the United States.

WILLIAM L. NUGENT,
Att'y for Petitioner.

Writ of error allowed, but without supersedeas.
Bond for costs in penalty of $500.00 to be given.
This April 20th, 1896.

JOHN M. HARLAN,
Asso. Justice Sup. Ct. U. S.

Endorsement: Filed May 18, 1896. E. W. Brown, clerk, by C. C. Campbell, D. C.

88 Know all men by these presents that we, Leander C. Goodsell, as principal, and Charles B. Wood and William B. Cunningham, as sureties, are held and firmly bound unto The Delta & Pine Land Company and Thomas Watson and William Watson in the full and just sum of five hundred (500) dollars, to be paid to the said The Delta & Pine Land Company and Thomas Watson and William Watson and their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs,

executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a supreme court of the State of Mississippi, in a suit depending in said court between Leander C. Goodsell and The Delta & Pine Land Company and Thomas Watson and William Watson, a decree was rendered against the said Leander C. Goodsell, and the said Leander C. Goodsell having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Delta & Pine Land Company and Thomas Watson and William Watson, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Leander C. Goodsell shall prosecute said writ to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LEANDER C. GOODSELL. [SEAL.]
CHARLES B. WOOD. [SEAL.]
WILLIAM B. CUNNINGHAM. [SEAL.]

Sealed and delivered in presence of—
C. J. POOLE.
LIPMAN LOSER.
JOHN C. MATHIS,
E. R. WOODLE,
As to Charles B. Wood.

GEO. W. KEMP,
Witness to signature of Wm. B. Cunningham.

Approved by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] 7829. Filed May 18, 1896. E. W. Brown, clerk, by C. C. Campbell, D. C.

This bond satisfactory.

S. W. BURNHAM, *Clk.*

89 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the

said State in which a decision could be had in the said suit between Leander C. Goodsell, appellant, and The Delta & Pine Land Company, Thomas Watson, and William Watson, appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause
90 of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

Filed May 18, 1896.

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

91 And on the 18th day of May, 1896, the following order was made, to wit:

LEANDER C. GOODSELL
v.
DELTA & PINE LAND CO. *et al.* } No. 7829.

The complainant in this cause having this day presented to the judges of this court the writ of error therein to the Supreme Court of the United States, service of the same is acknowledged, and the clerk of this court is directed, without delay, to make, certify, and

send up to the said Supreme Court of the United States, with said writ of error, a full, true, and complete transcript of the record of said cause and all the proceedings had therein, retaining in his office a copy of said writ of error to be filed with the papers.

In obedience to the command of this writ and the order of the supreme court of Mississippi, I herewith send to the Supreme Court of the United States the record of and the proceedings had in the cause stated in said writ, with all things concerning the same, duly certified under the seal of the said supreme court of Mississippi.

Seal State of Mississippi Supreme Court.

Given under my hand and seal of office this the 29th day of May, A. D. 1896.

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. Clerk*.

92 UNITED STATES OF AMERICA, *ss*:

To the Delta & Pine Land Company, Thomas Watson, and William Watson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Mississippi, wherein Leander C. Goodsell is plaintiff in error and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this sixth day of May, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

92½ [Endorsed:] 7829. Filed May 18, 1896. E. W. Brown, clerk, by C. C. Campbell, D. C.

On this 18th day of May, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared W. L. Nugent, Jr., before me, the subscriber, a notary public in and for the city of Jackson, Hinds county, Mississippi, and makes oath that he delivered a true copy of the within citation to Hon. Frank Johnston, the att'y for the Delta & Pine Land Co., Thomas Watson, and William Watson, on this day & date.

WM. L. NUGENT, JR.

Sworn to and subscribed the 18th day of May, A. D. 1896.

[Seal A. C. Jones, Notary Public, Jackson, Mississippi.]

A. C. JONES,
Notary Public.

The undersigned, att'y for the Delta & Pine Land Co. and Thomas Watson and William Watson, acknowledge service of a copy of the foregoing citation in error.

——— ———.

93 In the Supreme Court of the State of Mississippi.

LEANDER C. GOODSELL
vs.
DELTA & PINE LAND CO. *et al.* } No. —.

And now comes complainant in the above-entitled cause, by his solicitor, and says that manifest error hath intervened in the record and proceedings had in the said case, to his prejudice, in this, to wit:

1st. Said supreme court of Mississippi erred in its affirmance of the decree of the chancery court of Sunflower county had therein, whereby the defendants' demurrer to complainant's original and amended bills was sustained and the said bills dismissed. The said decree of the said chancery court should by the said supreme court have been reversed and the cause remanded to the court below for answer and a decree in complainant's favor.

2nd. The said supreme court erred in overruling suggestions of error made by the complainant upon the rendition of its decree of affirmance. The said suggestions of error should have been allowed and the decree of affirmance rendered by the said supreme court should have been vacated and set aside, and the decree of the chancery court of Sunflower county in said cause reversed.

Wherefore complainants pray-, etc.

NUGENT & McWILLIE, *Sol's.*

[Endorsed:] In supreme court of Mississippi. Leander C. Goodsell *vs.* Delta & Pine Land Co. *et al.* Assignments of error. Filed May 18, 1896. E. W. Brown, clerk, by C. C. Campbell, D. C. Nugent & McWillie, sol's.

94 STATE OF MISSISSIPPI:

Supreme Court.

I, E. W. Brown, clerk of the supreme court of Mississippi, hereby certify that the above and foregoing pages contain a true copy of the final record in the case of No. 7829, Leander C. Goodsell *v.* Delta and Pine Land Co. *et al.*, lately pending in and determined by said supreme court on appeal from the chancery court of Sunflower county, together with all proceedings had in said cause, with all things concerning the same, including the appeal papers, the original writ of error, and the original bond for writ of error and original citation and the return thereon, as well as the assignment of errors by counsel for plaintiff in error, as the same appear of record and were presented and filed in my office.

Witness my hand and seal of said supreme court, at office, at Jackson, this May 29th, 1896.

[Seal State of Mississippi Supreme Court.]

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Fees for above transcript.....	$54 75
Express charges to Washington, D. C.....	35
Total due.....	$55 10

Paid by Leander C. Goodsell.

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Endorsed on cover: Case No. 16,316. Mississippi supreme court. Term No., 537. Leander C. Goodsell, plaintiff in error, *vs.* The Delta and Pine Land Company, Thomas Watson, & William Watson. Filed June 2, 1896.

166-718

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, Plaintiff in Error,

vs.

THE DELTA AND PINE LAND COMPANY THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS AND WILLIAM MARSHALL.

Motion to Dismiss for want of Jurisdiction by The Delta and Pine Land Company, Thomas Watson, and William Watson.

FRANK JOHNSTON,
Counsel for
The Delta and Pine Land Company,
Thomas Watson, and William Watson.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, PLAINTIFF IN ERROR,

vs.

THE DELTA AND PINE LAND COMPANY, THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS, AND WILLIAM MARSHALL.

Motion to Dismiss.

The Delta and Pine Land Company, Thomas Watson, and William Watson, by their counsel, move the court to dismiss the writ of error in this case, upon the ground that no Federal question was considered or decided by the State court which would bring the case within the jurisdiction of this court.

FRANK JOHNSTON,
For the Motion.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, PLAINTIFF IN ERROR,

vs.

THE DELTA AND PINE LAND COMPANY, THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS, AND WILLIAM MARSHALL.

Motion to Dismiss.

The Delta and Pine Land Company, Thomas Watson, and William Watson, by their counsel, move the court to dismiss the writ of error in this case, upon the ground that no Federal question was considered or decided by the State court which would bring the case within the jurisdiction of this court.

FRANK JOHNSTON,
For the Motion.

Office Supreme Court, U. S.
FILED.
DEC 31 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, Plaintiff in Error,

vs.

THE DELTA AND PINE LAND COMPANY, THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS AND WILLIAM MARSHALL.

Brief for The Delta and Pine Land Company, on the Motion to Dismiss for want of Jurisdiction.

FRANK JOHNSTON,

Counsel for
The Delta and Pine Land Company,
Thomas Watson, and William Watson.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, PLAINTIFF IN ERROR,

vs.

THE DELTA AND PINE LAND COMPANY THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS AND WILLIAM MARSHALL.

Brief for the Delta and Pine Land Company, on Motion to Dismiss for Want of Jurisdiction.

Statement of the Case.

On March 27, 1893, Leander C. Goodsell, the plaintiff in error, filed his original bill in equity in this cause in the Chancery Court of Sunflower County, in the State of Mississippi, against the Delta and Pine Land Company, Thomas Watson, Byron H. Evers, George F. Phillips and William Marshall. A few days afterwards an amended bill was filed correcting certain misstatements of facts which appeared in the original bill.

The plaintiff in error claims in his original and amended bills to be the owner of an undivided one-fourth interest in the lands in controversy, described in the record in the present proceeding, and which are situated in the county of Sunflower, in the State of Mississippi, under a deed of quit claim made to him by one Matthew S. Baldwin on October 7, 1885.

It appears that the Delta and Pine Land Company claims title to all of the lands involved in this controversy, and also to other large bodies of lands in Mississippi, under a purchase from Thomas Watson, who purchased the same at a sale made under a decree in the equity cause of *Thomas Watson* v. *Byron H. Evers, George F. Phillips, William Marshall and Matthew S. Baldwin*, rendered on October 3, 1885, by the United States Circuit Court at Oxford, Mississippi.

The purpose of the present proceeding by the plaintiff in error is, by a collateral attack in the State court, to vacate and set aside the sale made under the decree of the Federal court, and to cancel and annul the title of the Delta and Pine Land Company acquired thereunder, upon the ground that the Federal court had no jurisdiction of the equity cause of *Thomas Watson* v. *Byron H. Evers et al.*, and upon the theory that the State court could review and set aside the decision of the Federal court on the question of its own jurisdiction.

The bill also seeks an accounting against the Delta and Pine Land Company for sales made by said company of portions of the lands since its purchase from Thomas Watson.

The original and amended bills do not contain a full

or clear statement of the complainant's case, and it is evident from the pleadings that the relations between the parties in the case of *Watson* v. *Evers et al.*, and their precise status or attitude in that cause, are not disclosed by the plaintiff in error, and it is evident that a statement or explanation of some of the material facts in respect to the pleadings, record, and proceedings in that cause are withheld. A transcript of the original bill of Thomas Watson is not exhibited in the present proceeding, nor does the plaintiff in error state the substance of said original bill. The supplemental bill filed by Thomas Watson in the said cause while the same was pending in the State court, is not exhibited with the bill in the present case, nor is its substance and effect set forth in the pleadings in this cause.

Nor is the answer of Matthew S. Baldwin set out by the plaintiff in error in his bill, nor is it shown by any averments of the bill what position said Baldwin took, or what pleadings, if any, he filed in said cause in the Federal court.

It appears by an interlocutory decree made in said cause on July 31, 1885, that the interests of Phillips, Marshall, Watson, and Baldwin had been ascertained and fixed by a written agreement of the parties previously made. And it appears from the second supplemental bill of Thomas Watson, filed in the Federal court, after the removal of the cause, that said agreement was filed and became part of the record in said cause. This instrument is not exhibited in the present proceeding, nor are its contents stated or explained by the plaintiff in error.

The case, as shown by the plaintiff in error, in his original and amended bills, and by the exhibits to the original bill.

On November 8, 1881, Byron H. Evers purchased the land in controversy, together with other lands, from one E. C. Gordon, who had purchased the same from the Board of Liquidating Levee Commissioners, under a decree made by the Chancery Court of Hinds County, Mississippi, in the case of *Joshua Green* v. *Hemingway and Gibbs, Liquidating Levee Commissioners,* which said title was valid and paramount. Evers took the title in his own name to all the lands.

On November 8, 1881, Byron H. Evers conveyed by deed to Matthew S. Baldwin an undivided one-fourth interest in the lands purchased by him from E. C. Gordon.

On October 7, 1885, Matthew S. Baldwin conveyed to the plaintiff in error, by deed of quit-claim, all of his right and interest in said lands situated in the county of Sunflower, for the alleged consideration of three thousand dollars.

In order to complete his purchase from E. C. Gordon, it is averred by the plaintiff in error, in his original bill, that Byron H. Evers borrowed the money necessary from Thomas Watson, and that Thomas Watson claimed to be the equitable owner of the lands because of the trust resulting from the investment of his money in said lands, to the extent of the money thus advanced and furnished.

On July 12, 1884, Thomas Watson, a citizen of Illinois, filed a bill in equity in the Chancery Court of De Soto County, Mississippi, to which Byron H. Evers, George F. Phillips, William Marshall, subjects of Great Britain, and Matthew S. Baldwin, a citizen of Illinois, were made parties defendant.

The substance of said bill is not stated in either the original or amended bills of the plaintiff in error. It is simply averred that the purpose of said bill was to establish a trust in the land, but it is not stated or explained against what parties the trust was to be established, or that it was claimed against any interest in the lands other than Evers' ownership, or claim of ownership. The facts relating to the interests of Phillips, Marshall and Baldwin in respect to Watson's claim, are not explained, and are left largely to conjecture. Nor are the relations between Phillips, Marshall, Watson, and Baldwin on the one hand, and Evers on the other, explained in any clear or satisfactory manner, but are left largely to inference upon an inspection of the meagre portions of the record in said cause which are filed as exhibits in the present case.

It is averred that Phillips, Marshall, and Evers appeared and answered the bill, denying the trust claimed by Thomas Watson. A supplemental bill was filed by Watson in the State court making Sylvester Gwin, Auditor of the State, a party defendant, to which Evers, Phillips, and Marshall filed an answer and a cross-bill for relief against Evers and Baldwin.

But neither this supplemental bill nor the answers thereto are set out in the present case, nor does the

plaintiff in error state the substance or effect of said pleadings.

On December 5, 1884, Thomas Watson, George F. Phillips, William Marshall, Matthew S. Baldwin, and Byron H. Evers met in Jackson, Mississippi, for the purpose of inducing Evers to adjust the differences between them. They failed to induce said Evers to make any arrangement of the matter, and accordingly Watson, Phillips, Marshall, and Baldwin agreed among themselves in respect to their interests in the suit, and reduced the same to writing. But this agreement is not set out in the present proceeding by copy or by proper averments.

It further appears that after the adjustment of the status of Watson, Baldwin, Phillips, and Marshall by the written instrument of December 15, 1884, Phillips and Marshall applied for a receiver to take charge of the lands, and for equitable relief against Byron H. Evers, Thomas Watson, and M. S. Baldwin, and for an injunction against Evers. Watson consented to this proceeding for a receiver and injunction, as begun by Phillips and Marshall, and Matthew S. Baldwin also consented to the same, and said proceeding was being prosecuted by said parties against Byron H. Evers for the purpose of legally adjusting the rights of the latter in the controversy. (Record, p. 39.)

This being the status of the case, Byron H. Evers, on December 26, 1884, filed his petition and bond in the State court for the removal of the cause from the State court to the Federal court at Oxford, said petition and bond being in conformity with the acts of Congress, and

thereupon the State court took no further cognizance of the cause.

Evers failed to file a transcript of the record in the Federal court, and thereupon, on January 23, 1885, it being necessary for the protection of the title to the land in the common interests of Phillips, Marshall, Baldwin, and Watson as against Evers, Thomas Watson filed an amended bill in the United States court by leave of the court, with which he filed in the Federal court a full transcript of the record of the cause lately pending in the State court. (Record, pages 34, 36, 37, 38.)

A motion was made by Matthew S. Baldwin to remand the cause to the State court, which was overruled by the Federal court, and to which ruling none of the parties excepted or objected.

A copy of the agreement of December 15, 1884, between Phillips, Marshall, Baldwin, and Watson was filed in the case in the Federal court by Thomas Watson with his supplemental bill, in January, 1885, and the Federal court was, therefore, advised in respect to the precise attitude of all the parties to that suit, and presumably arranging them according to their actual interests and substantial positions in respect to the controversy, decided that it had jurisdiction of the cause on the removal proceedings of Evers.

It appears that before the filing of the petition and bond for the removal of the cause to the Federal court, and while it was pending in the State court, Phillips and Marshall were proceeding against Evers for an injunction and for a receiver, and that Baldwin and Watson consented to said proceedings, the same being, presuma-

bly, in the common interest of said parties. (Record, p. 39.)

Before the removal of the cause, Thomas Watson also prosecuted an application in the State court for, and obtained, an injunction in the common interest of himself, Phillips, Marshall, and Baldwin, restraining Evers from fraudulently procuring an outstanding tax title, then in the State of Mississippi, to the prejudice of the other parties to the suit; and Phillips, Marshall, and Baldwin contributed to the success of this application by furnishing the letters and correspondence of Evers and his counsel, which disclosed the fraudulent character of Evers' scheme.

Thomas Watson also by his supplemental bill, in the common interest of himself, Baldwin, Phillips, and Marshall, sought to have a large sum of money deposited in Green's Bank, before the failure of said bank, applied to the payment of the taxes on the said lands. It is unnecessary to state the details of this matter. It will be observed, however, that the purpose of both the supplemental bills filed by Thomas Watson was to protect the common interests of himself, Baldwin, Phillips, and Marshall against Evers.

On July 31, 1885, the Federal court made a decree, the *first* paragraph of which defined the interest of Evers in the lands.

The *second* paragraph of the decree declared that the rights of the other parties to the cause were governed and controlled by the agreement of December 15, 1884, and then proceeded to define their respective interests in the land according to the terms of that agreement.

The *third* paragraph of the decree recites that Evers, in his answer, had conceded and assented that Thomas Watson was entitled to a lien on the land for the money advanced by him, and then declared that said Watson, as to Evers, should stand as a lien creditor or mortgagee; and as to Baldwin, Phillips, and Marshall, the complainant, Thomas Watson, was entitled, under the terms of the agreement of December 15, 1884, to reimbursement, and to have an interest in the lands according to the terms of the said agreement and of the second paragraph of the decree. (Record, p. 23.)

On October 3, 1885, a consent decree was made by the Federal court, assented to in open court by all the parties to the cause, by which Thomas Watson sold his interest in the lands to the defendants, Evers, Phillips, Marshall, and Baldwin, for the sum of $145,500, which was charged upon the land as purchase money, which was made a personal judgment against said parties, subject only to a lien for $35,166.48, due to M. D. Watson, trustee, and $21,232, due to George F. Phillips for money loaned to the receiver for the payment of taxes on the lands.

The decree then provided, by the consent of Evers, Phillips, Marshall, and Baldwin, for a partition of the lands among themselves according to the terms and conditions agreed upon by them.

Under this decree, and upon failure on the part of Phillips, Marshall, Evers, and Baldwin to pay the amount due Thomas Watson, the lands were sold, and Thomas Watson became the purchaser, and conveyed them subsequently to the Delta and Pine Land Company.

On October 7, 1885, four days after the consent decree was rendered, Baldwin conveyed to the plaintiff in error, by quit-claim deed, his interest in that portion of the lands situated in Sunflower County.

The plaintiff in error avers that the Federal court had no jurisdiction of the cause of *Watson* v. *Evers et al.*, upon the ground that Matthew S. Baldwin and Thomas Watson were both citizens of Illinois, and that the cause was not removable to the State court. (Record, pages 5, 35.)

The following is the language of the bill:

"Your orator is advised, believes, and charges that the said District Court of the United States was wholly without any jurisdiction whatever to maintain the said bill and to proceed therein to render any decree, and that being without any jurisdiction all its orders and decrees after filing said bill were *coram non judice*. Nevertheless, your orator has no disposition to interfere with the compromise agreement reached by the parties during said litigation as to the amount of money due to Thomas Watson for his advances of purchase-money and interest in the land in controversy, nor any agreement that may have been made by and between them in the adjustment of their rights, the one against the other, and which, independent of said suit, could have been made." (Record, p. 5.)

It is then averred that Thomas Watson and the Delta and Pine Land Company, as to the $145,500, stood as mortgagees to the lands, and entitled only to have a return made to them of the said $145,500, with interest at 6 per cent., and to have the lands included in said litigation subjected to sale to pay it. (Record, p. 5.)

It is stated in the bill that Thomas Watson received twenty-two thousand dollars on account of this decree, and the Delta and Pine Land Company has disposed of

a quantity of the lands since its purchase from Thomas Watson.

The prayer of the bill is that the sale made under the consent decree should be set aside, and an accounting had of the sales made by the Delta and Pine Land Company, and of the amount due on the decree for $145,500, and that the lands should be sold to pay the balance thus found due; subjecting first the lands lying outside of Sunflower County, and if no balance was found to be due to Thomas Watson that the lands in Sunflower County should be partitioned between the complainant Goodsell, Byron H. Evers, George F. Phillips, and William Marshall.

To this bill of the plaintiff in error, Byron H. Evers, George F. Phillips, and William Marshall filed a joint answer, admitting substantially the averments of the bill. They also filed a cross-bill against the Delta and Pine Land Company, William Watson and Thomas Watson for the purpose of having the sale made under the decree of the United States Circuit Court, in the case of *Thomas Watson* v. *Byron H. Evers et al.*, set aside as void, on the ground that the court did not have jurisdiction of the cause. There also appear in the cross-bill some vague averments that Thomas Watson deterred bidders at the sale made under said decree, and that Thomas Watson, through his agent in London, prevented Evers, Phillips, and Marshall from organizing a land company in England, and thus prevented them from satisfying and discharging said decree. It is unnecessary to allude to this pleading further as it is not brought into view in the consideration of the questions presented for decision.

Demurrer to the Bill.

The Delta and Pine Land Company, William Watson, and Thomas Watson filed a general demurrer to the bill, embracing the following grounds :

1. The bill does not show that the United States court did not have jurisdiction of the suit of Thomas Watson *v.* Byron H. Evers.

2. The facts in respect to the jurisdiction are not sufficiently pleaded to enable the court to decide whether the Federal court did or did not have jurisdiction.

3. The decision of the Federal court is *prima facie* correct, and there is nothing sufficiently averred to show that such decision was erroneous.

4. The court has no power to review the decision of the Federal court on the question of its own jurisdiction.

5. The bill and exhibits show that the controversy was between Evers, and Phillips, Marshall, Watson, and Baldwin.

6. The decree was rendered by consent of all the parties to the cause, and having been executed according to its terms, this complainant is estopped from setting the sale aside.

7. No relief should be granted because of the laches and delay of the complainant in setting up any objections to the decree.

8. It appears that parts of the land covered by the consent decree were sold to other parties, who are not included in this suit.

9. The bill is inconsistent in seeking to set aside the sale made under the consent decree, upon the ground that it is void for the want of jurisdiction in the Federal court, and for a resale of the lands to satisfy said consent decree.

10. It would be unjust and inequitable to grant the complainant any relief.

11. Thomas Watson acquired by consent of all parties the legal title which was held by James D. Stewart, the receiver in the case of Thomas Watson *v.* Byron H. Evers.

The State law provides that, "Exhibits filed with a bill, as part of it, shall be considered on demurrer as if copied in the bill."

Code of 1892, Section 528.

The demurrer was sustained by the Chancery Court of Hinds County, and the bill dismissed. From this decree the complainant appealed to the Supreme Court of the State, and at the October term, 1894, the Supreme Court affirmed the decree of the Chancery Court.

Opinions of the State Court.

The Supreme Court of the State in its opinion, delivered by Hon. W. R. Harper, special judge, held as follows:

1. That the Federal courts are courts of superior jurisdiction, and it is not necessary to the validity of their

judgments and decrees that all the jurisdictional facts should appear on the face of their proceedings and judgments.

2. In the case of a direct appeal, on the facts disclosed in this proceeding, it could not be held that the decision of the Federal court on the motion to remand the cause was even erroneous, for the reason that the facts and pleadings that made up the record before the Federal court are not presented by this proceeding.

3. So far as is disclosed by the present bill, the pleadings in the suit in the Federal court may have shown a removable cause.

4. It is not shown that Matthew S. Baldwin was an indispensable party who had a substantial controversy with Thomas Watson; on the contrary, the facts set out in the interlocutory decree of July 31, 1885, indicate that if Baldwin ever had a controversy with Watson it had been adjusted before the removal of the cause.

5. The denial by the Federal court of the motion to remand the cause was a decision and an adjudication of the question of its jurisdiction. It must be presumed to have been made upon a proper ascertainment of the facts in respect to the controversy, and that the cause was removable, and such decision is conclusive on the State court in the present proceeding. If the facts before the Federal court showed that the controversy was between Watson, Phillips, Marshall and Baldwin, on the one hand, and Evers on the other, the decision on the jurisdictional question was correct.

6. The decree and proceedings in the Federal court are binding on all the parties and privies thereto, and the decree of the Chancellor, sustaining the demurrer and dismissing the bill, is correct and is affirmed.

An application for a reargument was made to the Supreme Court of the State, which was denied by the Court.

Chief Justice Cooper, in denying the request for a rehearing, said:

"We have carefully considered the suggestions of error made by appellant and remain satisfied with the opinion heretofore delivered. In *Evers* v. *Watson*, in which case we have been furnished with a manuscript opinion of the Supreme Court of the United States, the decree herein assailed seems to have been attacked by other parties thereto by original bill in the court in which it was rendered, and from a decree dismissing that bill an appeal was prosecuted to the Supreme Court of the United States. The opinion of that Court affirming the decree of the lower court proceeds along the precise line of our opinion heretofore delivered.

"We have not decided, as counsel assumes, that an alien defendant, having a separable controversy, may remove a cause from a State to a Federal court. We have decided only, that upon the facts stated, it is not made to appear beyond controversy that upon the record the court could not have had jurisdiction; and this is given as the test by the Supreme Court for the determination of the fact of the want of jurisdiction.

"The whole record suggests that, while there may have been some dispute between the other parties in reference to their respective claims or interests upon the subject-matter of litigation, all claimed adversely to Evers, or rather that he asserted title against all other parties, while they claimed that he held as trustee for them. By an arrangement of the parties according to their real interests all others may have been complainants and Evers the sole defendant."

The case is now in this Court on writ of error to the Supreme Court of the State.

The Delta and Pine Land Company, Thomas Watson, and William Watson have made a motion to dismiss the writ of error upon the ground that no Federal question is involved in the decision of the State court, and that this Court has no jurisdiction of the case.

BRIEF.

I.

The decision and determination of this cause by the Supreme Court of the State did not involve the consideration or decision of a Federal question.

The jurisdiction of this Court in writs of error to the State courts is defined by section 709 of the Revised Statutes of the United States, which is as follows:

"A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privileges, or immunity specially set up or claimed by either party under such Constitution, treaty, statutes, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

The plaintiff in error by this proceeding sought to have the sale made under the Federal court decree set aside by the State court as null and void, on the ground that the Federal court had no jurisdiction, and upon the theory that the State court could review and annul the decree and proceedings of the Federal court.

This the Supreme Court of the State declined to do, resting its decision, substantially and in effect, upon the ground that the plaintiff in error had not stated and set out the record and proceedings in the Federal court sufficiently to enable the court to decide whether the Federal court did or did not have jurisdiction of the former proceeding.

It appears clearly that the State court did not decide, as an independent proposition, that the Federal court had jurisdiction of the case of *Watson* v. *Evers*, but, on the contrary, declined to consider or decide that question. And its decision, according to the general principles of law governing the case, is that the Federal court is a court of superior jurisdiction, and that it is not necessary to the validity of the judgment and decrees of courts of superior jurisdiction that all the jurisdictional facts should appear on the face of their record and proceedings, and that in the present case the plaintiff in error, by his pleadings, had not made it appear that the Federal court did not have jurisdiction.

The Supreme Court of the State did not place its decision in these precise terms, but this is the exact legal effect of the decision, and a correct statement of the legal grounds upon which it rests.

The proposition that one court of general jurisdiction

cannot, in a collateral proceeding, review and annul the judgments and decrees of another court of superior jurisdiction on the ground that the court did not have jurisdiction when it had decided expressly that it had jurisdiction of the case before it, is not a Federal question.

And the ruling that the former proceedings and decrees and the facts relating thereto, were not sufficiently set out and explained to enable the court to decide whether the Federal court had jurisdiction in the former proceeding, as an independent proposition, is not a Federal question, but one in respect to the sufficiency of the pleadings.

Both of these propositions are governed by, and are determinable upon, the general principles of jurisprudence administered by the courts of the several States.

The Supreme Court of the State said, hypothetically, assuming that the facts before the Federal court showed that the controversy was substantially between Evers and the other parties to the cause, and that Evers was substantially the sole defendant, that the decision of the Federal court in respect to the removal of the cause was correct.

This expression, however, was not necessary in the determination of the cause, and is not a decision of the independent proposition that the Federal court did have jurisdiction in the former proceeding. The entire legal effect of all that the Supreme Court of the State has said is, that the legal presumption of the validity of the decrees and proceedings of the Federal court had not been affected or destroyed by reason of any facts averred by the plaintiff in error in this proceeding, and that inas-

much as the facts which were before the Federal court when it determined the question of its jurisdiction were not presented to the State court, the legal presumption that the Federal court decided the question of its own jurisdiction correctly was not overcome or disturbed.

The question, therefore, whether the Federal court had jurisdiction of the cause, as an independent legal proposition, was not decided by the Supreme Court of the State, and the decision of that question was not necessary in the determination of the case.

The case went off in the State court upon the general principles of law in respect to collateral attacks upon the validity of the judgments and decrees of courts of general or superior jurisdiction, upon the ground of an alleged want of jurisdiction in the particular case.

The fact that the former judgment assailed in this collateral attack, was rendered by a Federal court was merely incidental and not controlling, as the immunity of the judgments of the Federal courts from collateral assailment comes within, and is governed by, this general doctrine of law.

If the judgment of one of the courts of Mississippi, of superior or general jurisdiction, had been thus collaterally attacked, the consideration of the case would have proceeded, and been determined upon, the same general principles of law applicable to the subject, and the decision would have been the same.

It may, in a limited sense, carry some suggestion of a Federal question because of the fact that the validity of a judgment of a Federal court is involved. But the decision of the proposition of law, that a Federal judg-

ment cannot be declared void in a collateral proceeding in a State court, upon the ground that the decision of the Federal court in respect to its own jurisdiction is conclusively presumed to be correct, where the facts upon which its decision rested are not disclosed, is not such a decision of a Federal question as will give this Court jurisdiction of the cause. This cannot be characterized correctly as the decision of a Federal question.

The State court did not reach the question whether the Federal court, upon a correct construction and application of the acts of Congress defining its jurisdiction in removal causes, had jurisdiction of the cause, nor did it consider or undertake to construe the Federal statute regulating the removal of causes from the Federal to the State courts.

It stopped short of that point, by placing its decision upon the general doctrine of law which protects the judgments and decrees of courts of general or superior jurisdiction from collateral attacks. A construction of the Federal statute, according to the view taken by the State court, was unnecessary in the decision of the case, in view of the facts presented in this proceeding.

The decision rests upon the presumption of law, in view of the particular facts set up in this proceeding, that the decision of the Federal court in respect to its jurisdiction is correct, and that its proceedings and decrees are therefore valid. Not that the decision of the Federal court was intrinsically correct, but so far as the facts disclosed by the plaintiff in error are to be considered, such decision was assumed, as a presumption of law, to be correct.

In the case of *N. O. Water Works* v. *La. Sugar Company*, 125 U. S., 18, 29, Mr. Justice Gray, delivering the opinion of the Court, said:

"In many recent cases under section 709 of the Revised Statutes, this Court, speaking by the Chief Justice, has reasserted the rule that to give it jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment could not have been given without deciding it.

N. O. Water Works *v.* La. Sugar Company, 125 U. S., 18, 29.

The following decisions of this Court are directly in point in support of the doctrine announced in *N. O. Water Works* v. *La. Sugar Company*, and are cited in the opinion of the Court in that case:

Brown *v.* Atwell, 92 U. S., 327;

Citizens' Bank *v.* Bank of Liquidation, 98 U. S., 140;

Choteau *v.* Gibson, 111 U. S., 200;

Adams County *v.* Burlington and Missouri Railroad, 112 U. S., 123;

Detroit Railway *v.* Guthard, 114 U. S., 133.

Chief Justice Waite, in delivering the opinion of the Court in *Moore* v. *Mississippi*, said:

"We are not required to re-examine the judgment of a State court simply because a Federal question may have been decided. To give us jurisdiction it must appear that a Federal question was necessarily involved in the decision."

Moore *v.* Mississippi, 21 Wall., 636, 639.

The limits of the jurisdiction of this Court were thus clearly defined by Mr. Justice Miller in delivering the opinion of the court in *Murdock* v. *The City of Memphis*, a case brought to this Court on writ of error to the Supreme Court of Tennessee:

"Finally, we hold the following propositions on this subject as flowing from the statute as it now stands:

"1. That it is essential to the jurisdiction of this Court over the judgment of a State court that it shall appear that one of the questions mentioned in the act must have been raised and presented to the State court.

"2. That it must have been decided by the State court, or that its decision was necessary to the judgment or decree rendered in the case.

"3. That the decision must have been against the right claimed or asserted by plaintiff in error under the Constitution, treaties, laws, or authority of the United States."

Murdock *v.* City of Memphis, 20 Wall., 590, 636.

It is respectfully submitted, that the fundamental purpose of Congress in giving this Court the jurisdiction to review the decisions of the State courts in the cases defined by the Federal statute, was to maintain the Federal power, and to preserve and secure rights arising under Federal authority, and not to leave the final and ultimate denial of these rights to the State courts.

This purpose, clearly, does not extend to the decision of rights made according to the general principles of jurisprudence administered by the State courts, involving no conflict between Federal and State authority, and where no effort is made by the State court to impair

the Federal authority or to deny rights claimed under Federal authority.

This Court said, in the case of the *Commonwealth Bank* v. *Griffith*, Chief Justice Taney delivering the opinion of the Court:

"The power given to the Supreme Court by this act of Congress was intended to protect the general government in the free and uninterrupted exercise of the powers conferred on it by the Constitution, and to prevent any serious impediment from being thrown in its way while acting within the sphere of its legitimate authority. The right was, therefore, given to this Court to re-examine the judgments of the State courts where the relative powers of the General and State governments had been in controversy, and the decision had been in favor of the latter."

The Commonwealth Bank *v.* Griffith, 14 Pet., 56, 58.

In the case of *Missouri* v. *Andriano*, 138 U. S., 496, Mr. Justice Brown, delivering the opinion of the Court, thus defined the purpose of the judiciary act giving this Court jurisdiction to review the decisions of State courts:

"The object of the present judiciary act was not to give a right of review wherein the validity of an act of Congress was drawn in question, but to prevent the courts of the several States from impairing or frittering away the authority of the Federal Government by giving a construction to its statutes adverse to such authority. Of course, if the construction given by the State court to the act under which the right is claimed be favorable to such right, no such reason exists for a review of the case by this Court."

Missouri *v.* Andriano, 138 U. S., 499, 500.

It is the well settled doctrine of this Court, that the jurisdiction does not exist where the decision of the State court rests upon a ground independent of a Federal

question and broad enough to sustain the judgment of the court, although a Federal question is presented and decided by the State court.

Mr. Justice Blatchford, delivering the opinion of the Court in *Beatty* v. *Benton*, 135 U. S., 244, and speaking of this subject, said:

"The case was decided against the plaintiff in error on an independent ground, not involving a Federal question, and broad enough to maintain the judgment. In such a case, even though the State court also decides a Federal question against the plaintiff in error, this Court dismisses the writ of error without considering the Federal question."

Beatty *v.* Benton, 135 U. S., 244, 254.

The following decisions are cited on this proposition by Mr. Justice Blatchford, in the opinion delivered in *Beatty* v. *Benton*:

Marron *v.* Brinkley, 129 U. S., 178, 181;
Hall *v.* Akers, 132 U. S., 554, 565;
San Francisco *v.* Itsell, 133 U. S., 65, 66;
Hopkins *v.* McClure, 133 U. S., 380, 386.

In the case now before the Court, it appears clearly that the Supreme Court of the State did not consider or decide any Federal question whatever.

In denying the application to the Supreme Court of the State for a rehearing, Chief Justice Cooper said:

"We have not decided, as counsel assumes, that an alien defendant having a separable controversy may remove a cause from the State to the Federal Court. We have decided only that upon the facts stated, it is not made to appear beyond controversy that upon the record the court could not have had jurisdiction, and this is

made the test by the Supreme Court" (of the United States) "for the determination of the fact of want of jurisdiction."

The allusion of Judge Cooper to the ruling of this Court is to the case of *Watson* v. *Evers*, 156 U. S., 527.

Upon analysis, the decision of the State court rests finally upon the insufficiency of the pleadings of the plaintiff in error, in not disclosing all of the material facts relating to the proceedings and decrees in the Federal court in the case of *Watson* v. *Evers*.

And the effect of the decision and judgment of the Supreme Court of the State, is to leave the parties as they stood under the decree of the Federal court and the sale made thereunder.

Whether a Federal court has jurisdiction of a cause is a Federal question, and if a State court should deny a right claimed under the decree of a Federal court, this Court would have a right to review such decision. But the proposition decided in this case, that the legal presumption of the validity of the decree of the Federal court was not overthrown by the facts set up by this plaintiff in error, proceeded upon the ordinary principles of law governing the subject, and can not possibly present a question which gives this Court jurisdiction to review such decision of the Supreme Court of the State.

The Supreme Court of the State did not go as far as this Court did in the recent decision of *Evers* v. *Watson*, 156 U. S., 527. It might have been decided by the Supreme Court of the State, under the authority of the decision of this Court in *Evers* v. *Watson* that, even if the decision of the Federal judge in the case of *Watson* v.

Evers, in respect to the community of interest between Watson and Baldwin, had been erroneous, the decision of the Federal court could not be reviewed and set aside in this collateral proceeding.

Mr. Justice Brown, delivering the opinion of the Court in *Evers et al.* v. *Watson*, said on this point:

> "Even upon the theory of the plaintiffs, to authorize the court to hold the decree in that case void in a collateral proceeding it was necessary to show beyond any controversy that, upon the record, the court could not have jurisdiction. This the pleader has failed to do. Even if he" (the United States district judge) "had been mistaken as to the actual community of interest between Watson and Baldwin, as a matter of fact his decision in respect thereto would not be reviewable collaterally."
>
> Evers *v.* Watson, 156 U.S., 527, 531.

Upon the authority of the doctrine thus announced by this Court, if the State court had decided, that the decision of a Federal court on the question of its own jurisdiction was conclusive on the parties, in the absence of an appeal, and conclusive on all other courts against collateral attack or review, still no Federal question would have been decided so as to give this Court jurisdiction.

As the decision stands, I respectfully submit that it clearly appears that the State court did not consider or decide any Federal question in declining, as it did, to review the decision of the Federal court on the question of its own jurisdiction, and to set aside as void the said proceedings and decrees of the United States Circuit Court.

II.

The plaintiff in error did not claim in the State court any title, right, privilege or immunity under the Constitution, or any treaty, statute, commission or authority of the United States, and no decision was made against any such claim of right arising under Federal authority.

The contention of the plaintiff in error does not involve the claim by him of any right arising under Federal authority. On the contrary, the sole purpose of this proceeding in the State court is to have the sale made under the Federal court decree, and under which the Delta and Pine Land Company claims title to the lands, vacated and set aside as null and void.

The claim of the plaintiff in error is made independently of the decrees in the case of *Watson* v. *Evers,* and is against the title claimed by the Delta and Pine Land Company under the decree and sale made in said cause.

The contention of the plaintiff in error is, that the entire proceeding, decrees, and sale in the Federal court are null and void for the want of jurisdiction in that court; and the relief prayed is, that the sale and the title acquired thereunder should be set aside and vacated on that ground.

Treating the decree of October 3, 1885, as void, as a decree of the court, the plaintiff in error proposes in his bill to accept, as the basis of the rights of the Delta and Pine Land Company and himself, any agreement made by the parties during the progress of the cause of *Watson* v. *Evers,*

and which was valid independent of the judicial proceedings in said cause. And then, making it more definite and distinct, the bill prays that the accounting should be made on the basis of the $145,500 due to Thomas Watson, as fixed by the consent of all the parties in the case of *Watson* v. *Evers*, on October 3, 1885. In other words, the position of the plaintiff in error is, that the decree, as a judicial decree, is void because of the want of jurisdiction in the Federal court, but he proposes to accept and treat it as an adjustment of the rights of the parties by way of contract or agreement, and independently of the authority of the Federal court. That the decree is valid or effectual by reason of the jurisdiction of the Federal court, he strenuously denies.

The consent of the parties, on October 3, 1885, that Thomas Watson should be paid $145,500 for his interest in the lands, to stand charged as a lien on the lands, independently of the Federal authority that made the decree, is therefore the basis upon which the plaintiff in error seeks relief, according to the position assumed by him in his pleadings.

His contention is that the sale made by the Commissioner under the decree is void for the want of jurisdiction in the Federal court.

The title claimed by the plaintiff in error to one-fourth of the land, was derived from Matthew S. Baldwin, who acquired the same from Byron H. Evers, who purchased from E. C. Gordon, and it is thus seen that this claim of title was not acquired under Federal authority.

The rights of the plaintiff in error and the Delta and Pine Land Company, according to the admissions of the

bill, rest upon the said agreement of the parties that Watson was to have $145,500 for his interest in the land, charged as a lien on the land. There is no claim made by the plaintiff in error that the settlement of October 3, 1885, treated as an agreement of the parties, shall be disturbed, but on the contrary, plaintiff in error asks that it be made the basis of an accounting and decree in this cause.

The plaintiff in error assails the title of the Delta and Pine Land Company, to the land acquired at the sale made under the decree of the Federal court, for the want of jurisdiction in the court. The Delta and Pine Land Company insists that the Federal court had jurisdiction, and that the sale and title acquired thereunder are valid.

The Delta and Pine Land Company claims title under Federal authority, and the plaintiff in error, claiming independently of any Federal authority, attacks the validity of the sale made, and the title acquired by the Delta and Pine Land Company under the authority of the Federal court.

The effect of the decision of the Supreme Court of the State was to sustain the right thus claimed by the Delta and Pine Land Company in declining, as it did, to vacate the decree and proceedings of the Federal court, and thereby denied to the plaintiff in error no right claimed by him under Federal authority.

The case of *Burke* v. *Gaines et al.*, 19 Howard, 388, was an action of ejectment brought by the plaintiff in error in the State court of Arkansas, and the defendants set up in defence a claim of title upon documents show-

ing a settlement claim under the laws of the United States. The State court adjudged the defendants' title to be valid.

Chief Justice Taney said, in delivering the opinion of the Court:

"It appears, therefore, that no right was claimed by the plaintiff in error under any act of Congress, or under any authority derived from the United States. He merely objected to the validity of the title claimed by the defendants in error. As the case appears in the record he was a mere trespasser holding possession in opposition to a title claimed under the United States. The decision of the State court in favor of the title thus claimed by the defendants in error can certainly give the plaintiff no right to bring this writ under the twenty-fifth section of the act of 1789. He claimed no right under the United States, and consequently can have no foundation for his writ of error."

Burke *v.* Gaines, 19 Howard, 388, 390.

In *Murray* v. *Charleston*, it was said in the opinion of the Court:

"The true test is not whether the records exhibit an express statement that a Federal question was presented, but whether such a question was decided, and decided adversely to the Federal right."

Murray *v.* Charleston, 6 Otto, 432.

In the case of *Fulton* v. *McAffee*, 16 Pet., 149, on writ of error to the Supreme Court of Mississippi, Morgan McAffee, the plaintiff in ejectment, claimed the land in controversy under a certificate of purchase under the Act of Congress of April 20, 1832. The contention was upon certain evidence offered by the defendants to prove that the certificate had been improperly obtained, and its authority had been denied by the Commissioner of the

General Land Office. The judgment in the State court was for McAffee.

Chief Justice Taney said, in delivering the opinion of the Court:

"These being the only questions raised in the State court, and being there decided in favor of the right claimed by McAffee under the Act of 1832, we have no authority to revise the judgment. In order to give this court jurisdiction under the twenty-fifth section of the Act of 1789, it is not sufficient that the construction of the Act of Congress, or the validity of the rights claimed by McAffee, was drawn in question, and decided by the State court. It must appear that the decision was against the right claimed."

Fulton *v.* McAffee, 16 Peters, 149, 152.

The Chief Justice thus stated the principle, in *Clark* v. *Pennsylvania,* 128 U. S., 395, 397:

"It is essential that the record should disclose not only that the alleged right, privilege, or immunity was specially set up and claimed in the court below, but that the decision of that court was against the right so set up or claimed."

Clark *v.* Pennsylvania, 128 U. S., 395, 397.

In *Terry* v. *Kings County,* 141 U. S., 668, 673, an Act of Congress was construed by the Supreme Court of the State of Washington, the State court holding that under section 1851 of the Revised Statutes of the United States, the Territorial Legislature could not clothe certain Boards of County Commissioners with judicial powers.

The Chief Justice, delivering the opinion of the Court, said:

"In all this there was no denial of the provisions of the Code, nor of the validity of an authority exercised under the United States in an enactment of these sections.

"The Supreme Court did, indeed, say that the Territorial Legislature could not have clothed Boards of County Commissioners with judicial powers in view of section 1907 of the Revised Statutes of the United States, whereby the whole judicial power was elsewhere reposed, but the opinion proceeded upon the ground that the Legislature had not intended to do so.

"We have repeatedly held that the validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done under such authority is disputed."

Terry *v.* Kings County, 141 U. S., 668, 673.

In the case before the Court, the Federal statute was not drawn in question, nor was the intrinsic validity of the Federal court decree or the jurisdiction of the Federal court as an independent proposition, considered or decided by the State court. And the entire decision rests broadly upon the general principles of law administered by the courts of the several States.

It therefore clearly appears that no Federal right was claimed by the plaintiff in error, there was no denial by the State court of any claim made under Federal authority, and no Federal question was decided by the State court.

III.

It is the well settled doctrine of this Court, that only the party whose right, claimed under Federal authority, is denied by the State Court, is entitled to the writ of error.

In the case of *Missouri* v. *Andriano,* the defendant in error, Andriano, claimed the office of Sheriff of Buchanan

County, Missouri, and contended that under the naturalization laws of Congress he was a duly naturalized citizen, and entitled, under the statutes of the State, to the office. The right claimed by Andriano under the laws of Congress was adjudged in his favor by the State court. And thereupon the relator in the case, who was the contestant against Andriano for the office, obtained a writ of error from this Court to the Supreme Court of Missouri. Mr. Justice Brown, delivering the opinion of the Court, thus clearly and forcibly announced the rule applicable to this phase of the jurisdictional question:

"There is clearly a right or privilege claimed by respondent under a statute of the United States within the meaning of the Revised Statutes, section 709, and had the judgment of the Supreme Court of Missouri been adverse to his claim, there could be no doubt of his right to a writ of error from this Court to review its ruling. It is insisted, however, that the relator has no right or privilege personal to himself or to his own status as a citizen, from such statute. The question thus presented is, whether the right or privilege must necessarily be personal to the plaintiff in error, or whether he is not entitled to a review where such right is asserted by his opponent and adverse to himself. While there is some force in the argument that the right of review in cases involving the construction of a Federal statute should be mutual, the act limits such right to cases where the State court has decided against the right, privilege or immunity set up or claimed under the statute. Now the only claim made under the Federal statute in this case is by the respondent. The difficulty with the position of the relator is that he asserts no right under the statute, but to establish the alleged alienage of the respondent, relies solely upon the fact that the latter was born abroad. To this respondent replies, admitting his foreign birth, but claiming that the statute makes him a citizen, and the State court has adopted his view.

"The object of the present judiciary act was not to give a right of review wherever the validity of an Act of Congress was drawn in question, but to prevent the courts of the several States from impairing or frittering away the authority of the Federal Government by giving a construction to its statutes adverse to such authority. Of course, if the construction given by the State court to the act under which the right is claimed be favorable to such right, no such reason exists for a review by this Court."

Missouri *v.* Andriano, 138 U. S., 469, 499, 500.

Under the authority of this ruling, the decision of the Supreme Court of Mississippi in the present case, that the decree and proceedings of the Federal court in the former proceedings were protected from collateral attack, and thereby declining to set aside said decree, and in effect sustaining the title acquired under said decree, can not be reviewed by this Court.

It is a correct decision, and in harmony with the doctrine announced by this Court in the case of *Evers* v. *Watson,* 156 U. S., 527. But if it was an erroneous decision this Court could not re-examine it, and such decision is final and conclusive, as it is in favor, and not in denial, of the right claimed under Federal authority.

The case of *Linton* v. *Stanton,* 12 How., 423, is identical with the present case in respect to the principle involved.

The defendant in that suit pleaded his discharge in bankruptcy. Objections were taken to the validity of the discharge in the State court, which were overruled by the State court, and a judgment rendered for the de-

fendant. This Court dismissed the writ of error for the want of jurisdiction.

Chief Justice Taney, delivering the opinion of the Court, said, with great force and clearness:

"We have no jurisdiction over the judgment of a State court upon a writ of error except in the cases specified in that section. And the jurisdiction of this Court is there limited with great care and in plain terms. It gives a writ of error to this Court where a party claims a right or exemption under a law of Congress, and the decision is against the right claimed. Undoubtedly, the defendant, in pleading his discharge under the bankrupt law, claimed a right or exemption under a law of Congress. But in order to give jurisdiction something more is necessary. The judgment of the State court must be against the right claimed. In the case before us the decision was in favor of it, and consequently no writ of error will lie to this Court under the provisions of the act of 1789. And as we have no jurisdiction we can not examine into the validity of the proceedings in bankruptcy. The judgment of the State court that they were valid, and that the defendant was thereby discharged from the debt due to the plaintiffs, is conclusive between the parties."

Linton *v.* Stanton, 12 How., 423, 425, 426.

The following decisions are to the same effect:

Gordon *v.* Goldsleugh, 3 Cranch, 268;
Strader *v.* Baldwin, 9 How., 261;
Burke *v.* Gaines, 19 How., 388;
Hale *v.* Gaines, 22 How., 144;
Reddall *v.* Bryan, 24 How., 420;
Ryan *v.* Thomas, 4 Wall., 603.

On the other hand, where the State court refuses to give proper effect to the judgment of a court of the United States, and denies the right claimed under such

Federal court judgment, the jurisdiction exists in this Court to review the State court decision on writ of error.

Dupasseur *v.* Rochereau, 21 Wall., 130;
Crescent City Co. *v.* Butcher, 120 U. S., 141.

Mr. Justice Blatchford, delivering the opinion of the Court, in the case of *Winona and St. Peters Railroad* v. *Plainview*, 143 U. S., 371, 390, thus stated the doctrine:

"To present a Federal question on the ground that full recognition and credit were not given by the State court to the judgment of the Circuit Court of the United States, it must appear that the State court denied to the plaintiff in error, within the terms of section 709, of the Revised Statutes, 'some title, right, privilege or immunity' held by the plaintiff in error under the judgment of the Circuit Court of the United States, and claimed it in the State court under the Constitution or statutes of the United States, and that the decision of the State court was against the title, right, privilege or immunity specially set up or claimed by the plaintiff in error under such Constitution or statute."

Winona and St. Peters Railroad *v.* Plainview, 143 U. S., 371, 390.

In the case of *Clements* v. *Berry*, 11 How., 398, an execution issued by a Federal court was levied by the United States marshal on personal property, which was sued for in an action of replevin in the State court. The decision was against the right of the marshal, and this court held, on error to the State court, that a right claimed under Federal authority had been violated, and maintained the jurisdiction to review the decision of the State court.

Clements *v.* Berry, 11 How., 398.

Where the claim was by the receiver of a Federal court to immunity from suits, without the previous leave of the court appointing him, this Court held that it had jurisdiction to review the decision of the State court, which was against the right or immunity claimed by the receiver.

McNulta *v.* Lockridge, 141 U. S., 327, 331.

In the case of *Giles* v. *Little*, in the opinion of the Court, delivered by Mr. Justice Gray, it was said:

"If the State court had refused to give effect to a final judgment of any court of the United States in a case against the same parties, a Federal question would have been presented, which might have been brought to this court for review."

Giles *v.* Little, 134 U. S., 645, 649.

In *Cary* v. *Devlin*, 154 U. S., 619, on writ of error to the Court of Appeals of New York, the Chief Justice, in the opinion of the Court, said:

"The motion to dismiss this cause is granted upon the authority of *Mining Co.* v. *Boggs*, 3 Wall., 304. There could have been no decision of the Court of Appeals against the validity of any statute of the United States, because it was found that the facts upon which the defendants below relied to bring their case within the statute in question did not exist. The judgment did not deny the validity of the statute, but the existence of the facts necessary to bring the case within its operation."

Cary *v.* Devlin, 154 U. S. 619.

It was said by this Court, in *Schuyler National Bank* v. *Bellong*, 150 U. S., 85):

"The decision must be against the title, right, privilege, or immunity so set up or claimed."

The following decisions on the same point are cited in the opinion of the Court in *Schuyler National Bank* v. *Bellong*:

Spies *v.* Illinois, 123 U. S., 131;
Brooks *v.* Missouri, 124 U. S., 394;
Chappel *v.* Bradshaw, 128 U. S., 132;
Texas Pacific Railroad *v.* Southern Pacific Co., 137 U. S., 48.

The decision, in a particular case, that a State court cannot examine and decide upon the jurisdiction of a Federal court in a former proceeding, is not the decision of a Federal question. This is all that the State court considered and determined in this case.

The State court considered, on the facts presented by the plaintiff in error, the question whether it could examine and decide upon the question of the jurisdiction of the Federal court as an independent question, and the decision was, that enough was not shown by the plaintiff in error to enable the court to say whether the Federal court decided the question of its jurisdiction correctly or not, and the decision finally rests upon the ground that the legal presumption of the validity of the Federal court decree was not overthrown or disturbed by the facts set up by the plaintiff in error.

In a word, the State court, on the case presented, declined to go into the question of the jurisdiction of the Federal court, and declined, therefore, to set aside its decrees and proceedings.

This all proceeded upon the familiar principles of general law as administered by the courts of the several States, and involves no Federal question.

If the State court had decided, upon a construction and application of the Federal statute, that the cause was properly removed, and that the Federal court had jurisdiction, there would have been the decision of a Federal question. But it would have been in favor of, and not against, the right claimed under Federal authority, and therefore such decision would not have given this Court jurisdiction of the cause, according to the well settled doctrine of this Court.

The plaintiff in error claimed the right to have the title of the Delta and Pine Land Company, acquired at the sale under the Federal court decree, set aside by the State court as null and void.

This was not the assertion of a right arising under Federal authority, and the denial of this relief to the plaintiff in error by the State court did not involve a Federal question, nor the denial of any right under Federal authority.

If the attack had been upon a former proceeding in a State court, the same decision would have been made on the general law applicable to the subject. And if this bill had been filed in a Federal court, attacking the decree and proceedings in the case of *Watson* v. *Evers*, the inquiry would have been on the same lines, and the conclusion would have been the same.

IV.

The decision of the State court rests upon a ground independent of any Federal question, and broad enough to sustain the judgment.

If the contention of the plaintiff in error that the sale made under the decree of the Federal court is invalid, is a Federal question, its decision, upon the grounds stated by the State court, did not involve the decision of a Federal question.

The court decided, on a consideration of the facts stated by the plaintiff in error, that it could not go behind the presumption of law in favor of the validity of the Federal court decree.

The decision rests, therefore, upon this independent ground, not involving a Federal question, and broad enough to support the judgment.

In the case of *Rutland Railroad* v. *Central Vermont Railroad* 159 U. S., 630, the Central Vermont Railroad Company, lessee of a certain railroad property, under stipulations in the lease with the Rutland Railroad Company, paid the taxes on the property and recouped the same against the rents. The lessor objected that the taxes were illegal, on the ground that the law under which the taxes were levied was void, because it impaired the obligation of a contract with the State exempting the property from taxation.

The State court denied the right thus claimed by the lessor, to be relieved from refunding the taxes, but on the ground that the lessee was under no duty to test the

constitutionality of the law, and the Rutland Railroad Company had made no offer to indemnify the Central Vermont Railroad Company, nor made any suggestion to the latter that the law was unconstitutional.

The right claimed under Federal authority was denied by the State court on the general principles of law applicable to and governing the case.

Mr. Justice Gray, in delivering the opinion of the Court, thus stated the jurisdictional principle applicable to the case:

"It is well settled by a long series of decisions of this court that where the highest court of a State, in rendering judgment, decides a Federal question, and also decides against the plaintiff in error, upon an independent ground, not involving a Federal question, and broad enough to support the judgment, the writ of error will be dismissed without considering the Federal question."

Rutland Railroad *v.* Central Vermont Railroad, 159 U. S., 630, 641.

In the case of *Klinger* v. *Missouri*, 13 Wall., 257, 263, Mr. Justice Bradley said, in delivering the opinion of the Court:

"Where it appears by the record that the judgment of the State court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws, or treaties of the United States, or upon some other independent ground, and it appears that the court did in fact base its judgment on such independent ground, and not on the law raising the Federal question, this Court will not take jurisdiction of the case, even though it might think the position of the State court an unsound one."

Klinger *v.* Missouri, 13 Wall., 257, 263.

Mr. Justice Lamar, in the case of *Delaware City Navigation Co.* v. *Reybold*, 142 U. S., 643, thus stated the rule:

"The rule is well settled that even if the Federal question was raised in a State court, yet if the case was decided on grounds broad enough to sustain, in themselves, the judgment, without reference to the Federal question, this court will not entertain jurisdiction. The authorities in support of this rule are too numerous for citation."

Delaware City Nav. Co. *v.* Reybold, 142 U. S., 643.

Without objection to the ruling of the Federal Court on the jurisdictional question, and without appealing, Baldwin claimed and exercised the right of having a final adjustment of the interests of all parties placed in the form of a final decree in the Federal court in the case of *Watson* v. *Evers et al.* The plaintiff in error took by his purchase from Baldwin the interest of the latter in the land, subject to the Federal court decree.

The right that the plaintiff in error now claims is to have the title acquired under the Federal court proceedings set aside by the State court, upon the ground that the Federal court did not have jurisdiction of the case of *Watson* v. *Evers*, which does not involve, in any view, the claim by the plaintiff in error of any right under Federal authority.

It is equally clear that the decision by the Supreme Court of the State that the judgments and decrees of all courts of superior jurisdiction, including the Federal courts, are presumed to be valid, when attacked collaterally, does not involve the determination of a Federal

question. But on the contrary it is an independent question, and is governed by the general doctrines and principles of law as administered by the courts of the State.

And the decision that the plaintiff in error had not presented the proceedings in the Federal court in such a manner as to raise the question whether the Federal court had jurisdiction of the case, was not the decision of a Federal question, or the denial of a Federal right, but was a refusal by the State court to consider or decide whether, upon construction of the act of Congress providing for the removal of causes to the State courts, the Federal court properly had jurisdiction of the equity cause of *Watson* v. *Evers*.

It is respectfully submitted that the writ of error in this case should be dismissed.

FRANK JOHNSTON,
Counsel for the Delta and Pine Land Company, Thomas Watson and William Watson.

Office Supreme Court, U. S.
FILED.
MAR 5 1897
J. H. McKENNEY,
CLERK.

Supreme Court of the United States

October Term, 1896.

No. 537.

LEANDER C. GOODSELL, PLAINTIFF IN ERROR.

vs.

THE DELTA AND PINE LAND COMPANY, THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS AND WILLIAM MARSHALL.

Brief for LEANDER C. GOODSELL on Motion to Dismiss for Want of Jurisdiction

T. B. CATRON,

Counsel for Leander C. Goodsell.

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Statement of the Case.

A short extract from the amended bill in this cause will aid in the presentation of the only question involved. It reads thus: "On July 12, 1884, said Thomas Watson exhibited his bill in the chancery court of De Soto County, Mississippi, stating in said bill that he was a citizen of the State of Illinois, against Byron H. Evers, George F. Phillips, and William Marshall, stated therein to be aliens, and Mat-

thew S. Baldwin, stated therein to be a citizen of the State of Illinois, for the purpose of establishing a trust in said lands growing out of the fact that he advanced the purchase money thereof to said Evers. The said Byron H. Evers, as aforesaid, and the said George F. Phillips and William Marshall, aliens, filed their answer to said bill, denying said trust and claiming that said Evers had sold an interest in said lands to said Watson. A supplemental bill was also filed in said state chancery court making Sylvester Gwin, Auditor of Public Accounts, a party defendant; to which supplemental bill answers were likewise filed, and the said Phillips and Marshall filed an elaborate answer in said cause, making the same a cross bill for equitable relief against said Evers and Baldwin. At this stage of the case the said Byron H. Evers filed in the said state chancery court a petition for the removal of said cause to the district court of the United States for the northern district of Mississippi, in equity, alleging, on the face of his petition, that he was an alien, and was, at the commencement of the suit, and still is, a citizen of the State of Great Britain and an alien, and that the said Thomas Watson was then, and still is, a citizen of the State of Illinois, and that there was then a separable controversy in the said cause between the petitioner and the said Thomas Watson. To the said petition a bond was attached, and the petition and bond were filed in the said chancery court on the 26th day of December,

1884. The bond, however, as your orator is informed, believes, and states, was never approved, nor was there ever any order in said cause made by the state chancery court for the removal thereof to the said district court of the United States. On the contrary, the said Evers, as your orator supposes and states, acting upon the advice of counsel and being persuaded, as the law was, and is, that the right of removal on his part did not exist, failed and neglected to file in the said federal court a transcript of the record from the state chancery court. Said record or transcript as your orator is informed, believes and states, was never filed by any one in the said federal court. So it was, however, that on the 23d day of January, 1885, the said Thomas Watson, then being, as he had before been, a citizen of the State of Illinois, by leave of the said federal court, exhibited and filed an amended bill in the cause, in which he stated himself to be a citizen of the State of Illinois and that the said Phillips, Evers and Marshall were aliens, subjects of Her Majesty Queen Victoria, of Great Britain, and that the said M. S. Baldwin was a citizen of the State of Illinois, resident in Chicago. On the face of the bill exhibited in the state court the citizenship and alienage of the parties were distinctly and carefully stated, so that it appeared from the bill itself that the district court of the United States for the northern district of Mississippi was wholly without jurisdiction to hear and

determine the subject matter of controversy between the parties if the proceedings to remove had been formally conducted.

In said amended bill so filed in said federal court it was stated that the case was pending on its merits therein, but that the said Byron H. Evers had neglected and failed to file a transcript thereof, as he should have done. For this reason the said Watson in said bill stated that he filed as Exhibit No. 1 thereto a full transcript of the case from the chancery court of De Soto County, Mississippi, for the purpose of showing the full status of the controversy between the parties thereto and as far as it had proceeded in that court, and prayed leave *to read* the same at that point stated in said bill for the information thereof, but he says that Exhibit No. 1 was never filed in said federal court, as your orator is informed, believes and states, as the transcript of a cause removed according to law and as a part of said bill. What proceeding was had in said cause as to process and answers your orator is unable to state further than he has stated in his said original bill. The main purpose, however, as your orator is informed, believes and states, was to secure the appointment of a receiver and prevent the loss of the lands which had been sold to the state for taxes, and to secure their redemption and purchase under the act of the legislature of the State of Mississippi referred to in said bill. No order of the said federal court was ever

taken, as your orator is informed, believes, and states, directing the filing of the said transcript from the chancery court as of a cause removed, or recognizing in any way the transfer thereof, further than the overruling of a motion to remand the cause, which your orator is informed, believes and states, was entered by M. S. Baldwin, one of the defendants.

Your orator, herewith and hereby repeating all other the allegations of his said original bill, asks that this amended bill be filed for the correction of the error contained in said original bill, and your orator prays the two may be considered together and taken as one bill in the cause.

Your orator is advised, believes and charges that, upon the face of the record, the said cause was never removed from the said state chancery court and is still practically pending in said court, and that the federal court was wholly without any jurisdiction to proceed in the cause and determine the matter at issue between the parties. Your orator was no party to the cause and had no notice of the proceedings taken therein so far as to affect him in any way by the decrees entered, nor could he in any way have the same reviewed because of the fact of not being a party to the suit he could not appeal to the Supreme Court of the United States.

He files herewith an Exhibit "D," a copy of the petition of Byron H. Evers for the removal of said cause, and a copy of the bill filed in the said federal

court by the said Watson, so far as the same may be obtained. The first page of said original bill has been lost, but your orator states on information and belief that on the said page of said bill the said Thomas Watson states himself to be a citizen of the State of Illinois, and that the defendants Phillips, Marshall and Evers were alien subjects of Her Majesty Queen Victoria. Your orator herein and hereby renews and reiterates the charges in his original bill made except as herein corrected, and prays, as in said bill, for relief, etc.; and in duty bound, etc.

(Signed) NUGENT & M'WILLIE.

The bond and petition for removal are in these words:

Exhibit D. Petition for Removal.

In the Chancery Court of De Soto County.

Be it remembered that in the chancery court of De Soto county and State of Mississippi on the 26th day of December, 1884, the following petition was filed in these words and figures, viz.:

Petition for Removal.

In the Chancery Court of DeSoto County, State of Mississippi.

THOMAS WATSON,
vs.
BYRON H. EVERS, ET. ALS.

Petition for removal to the district court of the

United States for the western division of the northern
48 district of Mississippi, acting as a circuit court.

To the said chancery court:

Your petitioner, Byron H. Evers, respectfully shows this honorable court that the matter in dispute in the above entitled suit includes, exclusive of costs, the sum or value of five hundred dollars; that your petitioner at the commencing of this suit was, and still is, a citizen of the State of Great Britain, and an alien, and that Thomas Watson was then, and still is, a citizen of the State of Illinois, and that in said cause there was a separable controversy between your petitioner and the said Thomas Watson.

And your petitioner offers herewith good and sufficient surety for his entering in said district court of the United States, on the first day of next session, a copy of the record in this suit and for the payment of all costs that may be awarded by said district court if said district court shall hold that this suit was wrongfully or improperly removed thereto, and he prays that this honorable court proceed no further herein except to make the order of removal required by law, and to accept said surety and bond and cause the record herein to be removed into said district court of the United States in and for the western division of Mississippi, and he will ever pray.

(Signed) CALHOON & GREEN,
Att'ys for Petitioner.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Before me, James McKee, clerk of the circuit court for the southern district of Mississippi, came Byron H. Evers and made oath that the statements of the foregoing petition are true.

(Signed) B. H. EVERS.

Sworn to and subscribed before —— this, the 24th day of December, 1884, as witness my hand and the seal of said court, at Jackson, State of Mississippi.

(L.S.) (Signed) JAMES McKEE, Clerk.

49 Filed this 26th day of December, 1884, at 10:41 o'clock a. m. R. R. WEST, Clerk.

And on said 26th day of December, 1884, the following bond was filed in the words and figures, viz.:

Know all men by these presents that I, Byron H. Evers, as principal, and W. L. Nugent and T. A. McWillie, and S. S. Calhoun as sureties, are held and firmly bound unto Thomas Watson in the penal sum of five hundred dollars; the payment whereof, well and truly to be made unto the said Watson, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents ————

Yet upon these conditions: That said Byron H. Evers having petitioned the chancery court of De Soto county, State of Mississippi, for removal of a certain cause therein pending, wherein Thomas Wat-

son is plaintiff and Byron H. Evers, M. S. Baldwin, George F. Phillips, and William Marshall, defendants, to the district court of the United States for the western division of the northern district of Mississippi, acting as a circuit court:

Now, if the said Byron H. Evers, petitioner as aforesaid, shall enter in the said district court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said district court of the United States if said court shall hold that said ———— was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this, the 24th day of December, 1884.

(Signed)	B. H. EVERS.	(Seal.)
	WM. L. NUGENT.	(Seal.)
	THOS. A. McWILLIE.	(Seal.)
	S. S. CALHOUN.	(Seal.)

UNITED STATES OF AMERICA, }
Southern District of Mississippi. } *ss.*

Before me, James McKee, clerk of the circuit court
50 of said district, this day came William L. Nugent, Thomas A. McWillie, whose names are signed to the foregoing bond, and made oath that they are severally worth the sum of five hundred dollars in visible prop-

erty subject to execution over and above liabilities and exemptions and in said district.

W. L. NUGENT.

THOS. A. McWILLIE.

Sworn to and subscribed before me this, the 24th day of December, 1884.

(Seal) J. M. McKEE, Clerk.

Filed at 10:41 o'clock A. M., December 26th, 1884.

R. R. WEST, Clerk.

I hereby certify that the foregoing six pages contain a correct transcript of all proceedings for removal of the cause from the chancery court of De Soto county, State of Mississippi, of which I am clerk, to the district court of the United States of the western division of the northern district of Mississippi.

(Seal) Witness my hand and seal of said chancery court, hereto attached, this 26th day of December, 1884.

R. R. WEST, Clerk.

The complainant, plaintiff in error, was not a party to the original proceedings either in the state or federal court, but acquired on October 7, 1885, the fourth interest of M. S. Baldwin in the lands in controversy, which Baldwin, long before the filing of Watson's bill, had acquired from Evers, the owner of all said lands. As the litigation was finally adjusted in the federal court Watson had a lien on the lands for money advanced and loaned Evers to effect the purchase, though by his bill he asserted full ownership

by way of resulting trust. The contention of plaintiff in error is that the original controversy was never in fact removed from the state to the federal court, and that in law such removal could never be accomplished in the manner attempted; and, therefore, that the federal court was wholly without jurisdiction to hear and determine it in any of its aspects, and even in overruling Baldwin's motion to remand, whether made by collusion or not, no such judgment was or could be pronounced as would prevent or avoid a collateral attack by a party not connected with the record, and who could not otherwise assail the proceedings.

The motion to dismiss the writ of error in this case, rests upon the ground that no federal question was considered or decided by the state court which would bring the case within the jurisdiction of this court, and this necessitates an inquiry into the contention to determine whether such federal question is found in the record, and if found whether it was considered or decided by the supreme court of Mississippi. It does appear that one of the three alien defendants to Watson's bill filed in the state court, made an abortive attempt at removal, but finding he had no such right proceeded no further than the filing of his bond and petition, in which he averred that a separable controversy existed in the cause between him and the complainant.

The petition for removal was jurisdictional. It

based the right of removal on the fact that there was a separable controversy between one of three alien defendants and a citizen of a state. If Evers had a right to remove the case on any other ground, he did not seek to avail himself of it. And whether the case was removed depends on what Evers did, not on what he could have done, but did not do. The maxim "Expressio unius est exclusio alterius" forcibly applies. And this is the construction a petition for removal has received on the circuit. In Mayer v. R. R. Co., 41 Fed. Rep., 723, the court (Judge Wallace) said: "A removing defendant may supplement the case made by his petition by a reference to the facts which appear elsewhere in the record; but it has never been decided that he is at liberty to abandon the ground upon which his petition proceeds, and assert an inconsistent case."

The court can not look into the record, and, after arranging the parties on opposite sides of the controversy, find that all the parties were seeking common cause against the alien Evers, and that therefore the case was removable. The removal cannot be sustained on that ground, because Evers did not claim the right to remove it on that ground. To sustain the removal on that ground the court must eliminate from the petition the allegation that there was a separable controversy between Evers, the alien, and Watson, and substitute in place thereof an allegation that all the other parties were making com-

mon cause against Evers, the alien. That would be the filing of a petition by the court, and not an adjudication by the court as to whether Evers by the petition he filed effected a removal of the cause. The question then is, did Evers by his petition effect a removal.

The removal act of 1875 has undergone such repeated discussion and adjudication by this court that, in our view, its scope can readily be determined. By the act provision is made for two classes of case. In one "either party," whether constituted of one or a dozen people, may remove a cause begun in the state court where the requisite conditions exist; in the other, any single plaintiff or defendant may remove where there is a separable controversy as to him, and a diversity of citizenship exists. Now by the first clause of section 2 of the act the status of the alien above is fixed; he has no right, because of a separable controversy, to remove and, therefore, upon the petition actually filed by Evers, the cause was not removable in law. If not removable in law it was not removed. This appears to us to be a satisfactory answer to the proposition of counsel, for even if the right existed under the first clause of the second section of the act, and was not attempted to be exercised at all, it could not be said that a non-existent right could, in law, be availed of to further an existent right neither claimed nor asserted in any way. American Bible Society v. Price, 110 U. S. 60; Hyde v. Ruble,

104 U. S. 407; Ayers v. Watson, 113 U. S. 594.

The first clause of section 2 of the "Removal Act" relates to a controversy "between citizens of a state, and foreign states, citizens or subjects," and the cause is not to be separated, or separably divided to confer jurisdiction. It must be one not separable, and the existence of conditions warranting removal at the time of suit alone determines the right to remove. This fact must appear on the face of the pleadings. In the case of a separable controversy THE MERE POSITION OF THE PARTIES ON THE record or face of the pleadings is of no importance. In a cause not separable the pleading determines the right of removal. If, at the time of suit brought, the cause itself was not removable under the first clause of section 2, no subsequent arrangement between a plaintiff and one or more defendants could create a right not before existing, or warrant the court in finding a separable controversy between Evers and Watson and Baldwin so as to maintain jurisdiction, especially when, under the second clause of the section, no such ground could be or was laid for removal.

Accepting the allegation of the bill to be true, the question is, could Evers alone, by any sort of proceeding, have removed the cause? In King vs. Cornell, 106 U. S., 398, the supreme court say: "It follows that the whole of the second subdivision of Sec. 639 (of Revised Statutes), was repealed by the act of 1875, and that the cause was not removable on the separate

petition of the alien. This makes it unnecessary to consider whether there was in the suit such a separate controversy as would have entitled him to a removal, if the law had been otherwise." The plain meaning of this is, that the alien, one of the party defendant, could not act alone to remove a cause, but that the petition for removal could only be presented by the party defendant, and no such petition was ever presented in this case. It is true, in that case, or suit, one of the defendants was a citizen of the State of New York and the complainant was such citizen also; but the court could lay no stress on this fact because that defendant had not joined or united in the petition at all, and the court properly did not discuss the question. It was not considering what might be done, or might have been done, it was enough to determine the question of law by what had been done. The bill alleges that Watson, a citizen of Illinois, exhibited his bill in the state court against Baldwin, a citizen of Illinois, and Evers, Phillips and Marshall, aliens, to establish a trust in the lands, and this allegation is admitted. In this exigency the court could not assume that there was a separable controversy and place Baldwin, Phillips and Marshall and Watson on one side, and Evers on the other, and thereby give rise to a right which could not and did not exist; and having withdrawn the cause from the state court, because of a supposed separable controversy, maintain the jurisdiction of the federal

court, not because of the petition filed, which was not warranted by law, or any proceedings had under it, but because the moving defendant might, in some way not indicated or attempted, have effected a removal.

On the contrary, the act of Congress, in so far as applicable to this case, only includes a suit between citizens of a state on one side, and aliens on the other, and such a suit is not removable except on the petition of all the defendants. We may go farther and concede that the party defendants may be constituted of aliens and citizens of a state different from that of the complainant; and the concession could go no further. But if this be done, the attempted removal in this case was unlawful, Baldwin and Watson being citizens of the same state, and Phillips and Marshall not joining in the application. The first clause of section 2 of the act plainly says "either party" may remove the suit into the Circuit Court of the United States for the proper district. And if Baldwin be eliminated it still was necessary that Phillips and Marshall should join in the petition for removal; no single defendant could constitute the party defendant. Under the second clause of the section any single person could remove because of a separable controversy and where removed for the determination of this separable controversy, the whole suit was within the jurisdiction of the court for final adjudication. Under the first clause of the section the *whole suit*

was removed *at once*, and the jurisdiction of the court depended wholly upon the existence, at the time of suit brought, of the citizenship and alienage of the parties, plaintiff and defendant. Under the second clause of the section the "whole suit" as incidental to the separable controversy was drawn into the jurisdiction of the court for determination. In other words, because of the separable controversy between the complainant and one of the defendants, diversity of citizenship appearing, the court acquired jurisdiction to determine it, and in the determination of the separable controversy necessarily had to adjudicate the whole suit. It goes without saying that the whole cause could not be removed unless the party defendant, constituted of all persons designated as defendants, was authorized to prefer the request. The petition, in this case was not filed by the party defendant.

Now before the attempted removal answers and cross bills were filed, and the adjustment between Watson and Baldwin followed. This adjustment, however, as the pleadings and decree show, simply fixed Baldwin's interest in the land as well as that of Phillips and Marshall, and all these interests were hostile to Watson, who was a lien creditor only.

Now the bill alleges that the transcript was never filed at all in the federal court, and the decrees entered in the cause, as well as the agreement which, being exhibited with the bill are, under the Missis-

sippi Statute, to be considered on demurrer, Code 1892, sec. 528, Code 1880, sec. 1869, utterly explode the idea of their being no controversy between Watson and Baldwin when the suit was brought or when the decree was entered. It manifestly appears that Watson had a money decree and against all the defendants; but if he had a right because of a trust to take the lands his position would be the same. The mere subsequent agreement as to the extent of his right could not affect the legal status of the parties on the record. In any event Watson was the complainant and all the other parties, the defendants. What affected the interest of one affected the interest of all. If I owe one and he sue me, the mere fact that I confess the debt does not make the suit less a controversy, and differentiate the adversary relations of the suitors.

The point most strenuously urged in defense of our suit is this: "The federal court acted on the motion to remand, and thus adjudicated in favor of its jurisdiction. In passing on the question it must have considered the facts, and however erroneous it cannot be open to a collateral attack." Under the pleadings in this case the judgment proceeded on the assumption that Baldwin had no right to make the motion; to go outside the pleaing it appears that the only point decided was that Baldwin and Watson stood together as against Evers, an alien, and there was no controversy between Watson and Baldwin.

The contention ignores the decisions of the supreme court of the United States to the effect that the record is the only evidence on the question of jurisdiction, and that its averments are conclusive; that the alien had no right to remove the cause from the state court at all; that, the pleaings and petition show that the court was without jurisdiction ab initio; and that the jurisdiction of the federal court is special and limited. Certainly unless the record, on its face, shows the requisite jurisdictional facts the courts cannot proceed at all, and where the record affirmatively shows facts incompatible with jurisdiction the judgments of the court are coram non judice. Of course if the jurisdiction be shown the decrees and judgments of the court are equal in dignity with those of the states.

But our attention is called to cases illustrating our opponent's theory, and we refer to them. In ex parte Thomas, 3 Pet. 193 the petitioner obtained writ of habeas corpus, and thereby sought his enlargement because he contended that the indictment found against him in the Circuit Court for the District of Columbia charged no offense against the laws of the United States. It was denied for the reasons, that the supreme court had no jurisdiction in criminal cases, and as it had no power on writ of error to examine the proceedings it could not, under color of a writ of habeas corpus, reverse a judgment which the law had placed beyond its control. That the said

circuit court was a court of record having general jurisdiction over criminal cases and that to determine whether the offense charged in the indictment be legally punishable or not was among the most unquestionable of its powers and duties. That the decision of this question in the exercise of jurisdiction must remain in force unless reversed regularly by a superior court capable of reversing it, and no court can look behind that.

The case of Skillern's Exs. v. Mays Exr., 6. Cranck, 267, went off on the point that the circuit court was bound to execute the mandate of the supreme court, although the jurisdiction of the court was not alleged in the pleadings. The judgment was erroneous for want of the averment of jurisdiction, but nevertheless was obligatory. This case rests on a peculiar state of facts, and does not support the contention of counsel. Had the averment of the pleading affirmatively shown a case in which the court had no jurisdiction at all, it would have otherwise have been disposed of. The distinction is presented by Marshall, C. J., page 207 of the report. The judgments of the courts of the United States, although their jurisdiction be not shown in the pleadings, are yet binding on all the world, and the want of jurisdiction thus appearing alone can avail the party only on writ of error. But if the pleadings show no jurisdiction the rule is different.

In McCormick and Wife v. Sullivant et als., 10

Wheaton 192, the court repeat the same opinion: The courts of the United States are all of limited jurisdiction; but they are not, on that account, inferior courts, in the technical sense of these words, whose judgments taken alone are to be disregarded. If the jurisdiction be not alleged in the proceedings their judgments and decrees are erroneous, and may, upon a writ of error, or appeal, be reversed for that cause. But they are not absolute nullities, of course in cases where the jurisdiction is not alleged, or where the requisite citizenship did not exist upon the record. The mere non averment could not, of itself, nullify the judgment, for non constat, as matter of fact, it may have existed. The plea to the bill stood upon the judgment dismissing a former bill as a bar; the answer to the plea rested upon the ground that the record in the former cause did not state that the parties to it were citizens of different states. The court held that the decree was not assailable collaterally for the reason stated.

In Kennedy v. Bank, 8 How. 586, the same conclusion was reached, and the former judgments affirmed, and upon the same idea. There was no averment of citizenship at all in the pleadings, and the decree were collaterally assailed.

In Wood v. Mann, 1 Sumn. 578, the court clearly had jurisdiction over the parties because of the averment of citizenship. There was no plea to the jurisdiction denying the citizenship averred, but the fact

was stated in the general answer to the merits. The court held this could not be done, saying: "In every writ and bill bringing a suit before the circuit court it is, therefore, indispensable to show by proper averments in the record, that the plaintiff and defendant are citizens of different states; and the omission is fatal in any stage of the cause, unless it is covered by amendment. But where the citizenship is properly averred, the circuit courts have complete jurisdiction, unless that jurisdiction is ousted by a denial of the citizenship and proof of the non-existence of the citizenship of either party as alleged." And this the court held could only be done by plea in abatement.

There is nothing in the case of U. S. v. Arredondo, 6 Peters, 729, that contravenes these views. The doctrine announced that, where power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise confided to his or her discretion the acts so done are binding and valid as to the subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred, has never been disputed. But the condition must exist. The power and jurisdiction delegated must appear, and be shown to exist.

State v. Scott, 1 Bailey, S. C., 294, was an appeal from the lower court to review a decision on an application for a discharge. There was a plea to the

jurisdiction that the defendant, though charged as such, was not a free person of color, but was a free white person and not amenable to the tribunal. That fact being found against him he pleaded that more than six months had elapsed between his arrest and the term of his trial. This was decided in his favor, and the trial was not proceeded with, but he was committed to jail to be further dealt with according to law. The defendant was brought before the circuit court at its next meeting on habeas corpus, and that court being satisfied that the trial court had erred on the prisoner's second ground of defense refused to discharge him and ordered a mandamus to issue to compel the justice's court to proceed to his trial on the merits. From this order the prisoner appealed.

The supreme court say that the judgment of an inferior court on the question of jurisdiction addressed to it, has the same binding efficacy on the parties as its judgment or any other matter confessedly within its cognizance; and that errors in this respect can only be corrected in the same manner that its other errors are. The only exception to this rule is where the want of jurisdiction is apparent on the face of the proceedings themselves." And that is just our case. It is useless to state the ultimate disposition of this case, but it does forcibly illustrate our views.

Neither Cox v. Thomas, 9 Grattan, 323, nor Grignon's Lessee v. Astor, 2 How. U. S., 319, have any ap-

plication here. They announce principles well settled. Where a court confessedly has jurisdiction of a cause but proceeds erroneously, its errors must be corrected by appeal. But if it have no jurisdiction the whole proceeding is a nullity. Therefore the question is whether the court has jurisdiction of the subject matter between the parties before it. Now where the jurisdiction of a court of general jurisdiction is questioned, it must decide the question itself, and it is not bound to set forth the reasons or facts of its decision of record. And this grows out of the law of presumptions applicable to judgments of such courts. This, however, is said as to courts of general jurisdiction in which nothing as to citizenship is required to be stated of record. In all cases sought to be removed from the state courts the jurisdictional facts must be made to appear because it is upon them that one court loses and another acquires jurisdiction. In the federal courts the record is the exclusive evidence on this point, and when it does show that the case was not a removable case, no court, by holding on or acting on a motion to remand adversely, can acquire any jurisdiction at all. The maxim est boni judicis ampliore jurisdictionem cannot be invoked in such case.

In Crehore v. Railway Co., 131 U. S., 244, this court considered the question now presented, and its luminous judgment leaves nothing further for me to say as to the question of jurisdiction. "If the case be not

removed, the jurisdiction of the state court remains unaffected, and, under the act of congress, the jurisdiction of the federal court could not attach until it becomes the duty of the state court to proceed no further. No such duty arises unless a case is made by the record that entitled the party to a removal." In Stone v. South Carolina, 117 U. S., 430, it was determined that the mere filing of a petition for a removal of a suit which is not removable does not work a transfer, unless the petitioner shows a right to demand the removal. No argumentation as to comity or conflict of jurisdiction can affect the discussion. The conclusions we draw from the adjudications are perfectly warrantable. The alien Evers had no right under the act of 1875 to remove the cause from the state to the federal court; the cause not being removable on his application, as shown on the face of his petition, the jurisdiction of the state court was not, in the least affected thereby; the state court having full and complete jurisdiction the federal court could not divest such jurisdiction by its action on the motion to remand; to exercise any active jurisdiction the federal court must have acquired it in some way, and had the state court proceeded with the cause or dismissed the bill for want of prosecution, notwithstanding the petition filed by Evers, its judgment would have been approved on appeal.

A court must have jurisdiction of the person or its judgment will be void. Ex parte Anderson Cren-

shaw, 15 Peters, 119. When a court has jurisdiction it has, of course, the right to decide every question which occurs in the case, and whether its decision be correct or not, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority its judgments and orders are regarded as nullities. They are void, and form no bar to a recovery sought in opposition to them even prior to a reversal. Elliott v. Piersel, 1 Peters, 340. When attacked collaterally it is not enough that the record does not show jurisdiction affirmatively; it must affirmatively appear that the court did not have jurisdiction. A presumption of jurisdiction is indulged in the one case to supply the absence of evidence or averments respecting the facts presumed; but when the record makes the averment, or states the evidence with reference to a judicial fact it will be understood to speak the truth, and it will not be presumed that there was other or different evidence respecting the fact, or that the fact was otherwise than as averred. Otherwise it would never be possible to attack collaterally the judgment of a supreme court, although a want of jurisdiction might be apparent on its face. Judgment without jurisdiction is unavailing for any purpose. Galpin v. Page, 18 Wall., 350; Wilhousan v. Perry, 8 How. 540. When the want of jurisdiction is affirmatively shown on the record neither silence nor positive consent will confer a jurisdiction denied

to the court by statute. Graves v. Carton, 132 U. S. 571. The case of Railway Co. v. Swan, 41 U. S., 382, illustrates our contention, and presents the view of the court as to distinction in cases taken up on a writ of error for review, and those in which on a collateral attack the want of jurisdiction affirmatively appears on the face of the record. In the one case presumptions are indulged ex debito justitiae; in the other not. In Moore v. Town Council of Edgefield, 32 Fed. Rep., 498, the judgment was for $2105.75, but an inspection of the record showed that the principal of demand was $1876.89, less than $2,000. On a subsequent proceeding for a mandamus to compel payment of the judgment objection was made to the introduction of the record of the judgment and it prevailed for the reason that the court was wholly without jurisdiction to hear and determine the controversy originally. "But when it appears," say the court, "by an inspection of the record that the matter was coram non judice, the judgment is void and of no effect and must be disregarded." Counsel replied to the argument on the objection that the judgment went by default, but his argument did not receive any attention, and should not have merited attention. The failure of the defendant to appear could not confer jurisdiction when none existed in law. Rich v. Mantz, 134 U. S. 632.

Surely the action by counsel upon the motion made by Baldwin to remand the cause could not reduce the

question to one of error. The court could not thus confer upon itself jurisdiction.

But it is contended that the case of Evers v. Watson, 156 U. S. 527, concludes the right of the plaintiff in error to attack collaterally the decree under which the defendants in error assert title, and an examination of the decision in that case is necessary. Our contention is, however, that the issue involved in the present controversy was not presented to the court at all. In the Evers case the court was groping in the dark, and was compelled to resort to the well recognized law of presumptions to maintain the jurisdiction of the lower tribunal. The court does say, however, to authorize the court to hold the decree in the case void it was necessary to show beyond any controversy that upon the record the court could not have had jurisdiction. This Evers failed to do; that we have done in the present controversy. The statement by this court: "But we do not wish to be understood as holding that, even if jurisdiction had not been apparent upon the record, advantage could be taken of it, even after a final decree and in a collateral way," is in line with all the adjudications upon which we rely. On a collateral attack the record must show affirmatively that the court did not have jurisdiction; the distinction is obvious and it is just. In Skellein v. May, the jurisdiction, while in fact existing, was not alleged in the pleadings, and the circuit court simply carried into execution the decree of

this court. In McCormick v. Sullivant, 10 Wheat., 192, the record did not show that the parties were citizens of different states, and the other cases cited by the court in the Evers case proceed upon the same principle of adjudication. The substantial conclusion is, that when the record does not show jurisdiction a judgment or decree cannot be collaterally assailed; but when it does not show that the court was wholly without jurisdiction such judgment or decree may be so assailed. On this rock our case rests, for we show by the record, aided and supported by a decision of this court, that there never was in fact or in law a removal of the case from the state to the federal court. The alien Evers, attempted to exercise a right not given, and actually abandoned the attempt when he discovered he had no such right. It is only where the petition on its face, alleges a separable controversy, and is filed by a party entitled to present it that the federal court can take cognizance for any purpose. The Evers case, decided by this court, rested wholly upon the predicate that Baldwin and Watson were citizens of the same state, which might or might not affect the right to remove. It is true that after a case reaches the federal court in due course the court can, on a motion to remand, rearrange parties according to their interests so as to determine the motion; but the case must, of necessity, have gotten lawfully to the court and be in the court before it can act at all. Otherwise a party could take out a copy of the record

without petition or showing of any kind, and by filing it confer jurisdiction sufficient to prevent collateral attacks upon any judgments or decrees therein rendered. The far-reaching effect of any such conclusion is too manifest to be discussed. There is neither legal or equitable estoppel on the plaintiff to assert his rights in the manner attempted by him.

Adverse counsel criticise the scope of the bill in this case because the plaintiff in error offered to do equity by allowing all sales by defendants in error to stand. He could not have done less, for no court would ever have allowed him to disturb bona fide purchasers for value when his interests could be otherwise fully guarded and protected.

T. B. CATRON,

Counsel for Leander C. Goodsell.

Office Supreme Court, U. S.
FILED
MAR 11 1897
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 537.

LEANDER C. GOODSELL, Plaintiff in Error,

vs.

THE DELTA AND PINE LAND COMPANY,
THOMAS WATSON, WILLIAM WATSON,
BYRON H. EVERS, AND
WILLIAM MARSHALL.

Brief for the Delta and Pine Land Company, in Reply, on the Motion to Dismiss for the want of Jurisdiction.

FRANK JOHNSTON,
Counsel for
The Delta and Pine Land Company,
Thomas Watson, and William Watson.

Supreme Court of the United States.

OCTOBER TERM, 1896.

LEANDER C. GOODSELL, PLAINTIFF IN ERROR,

vs.

THE DELTA AND PINE LAND COMPANY, THOMAS WATSON, WILLIAM WATSON, BYRON H. EVERS, GEORGE F. PHILLIPS, AND WILLIAM MARSHALL.

Brief for the Delta and Pine Land Company in Reply, on the Motion to Dismiss for Want of Jurisdiction.

I.

The only question presented by the motion to dismiss is the jurisdiction of the Court to review the decision of the State court.

The counsel for the plaintiff in error, in the brief which he has filed on this motion, has not discussed, or

alluded to, the question of the jurisdiction of the Court to review, on writ of error, the decision of the Supreme Court of the State, which is the only question presented by the motion to dismiss. On the contrary, his entire argument is confined to the proposition that the United States Circuit Court for the Northern District of Mississippi did not have jurisdiction of the case of *Thomas Watson* v. *Evers et al.*, on the removal of the cause from the State court, and that its decrees and proceedings are absolute nullities.

The motion to dismiss this writ of error rests upon the proposition that there is no question decided by the Supreme Court of the State that brings the case within the jurisdiction of this Court, to review the decision of the State court under Section 709 of the Revised Statutes. It is, therefore, wholly immaterial, whether the decision of the United States Circuit Court, upon the question of its own jurisdiction, in the case of *Thomas Watson* v. *Evers et al.*, was erroneous, or whether the decrees and procedings in that cause were void for the want of jurisdiction in the Court; or whether the decision of the Supreme Court of the State is erroneous in declining to review the decision of the United States Circuit Court, and in refusing to declare that the proceedings in the Federal court were void.

Counsel for the plaintiff in error, in his brief, has treated the question of the jurisdiction of the United States Circuit Court, in the case of *Thomas Watson* v. *Evers et al.*, as if the decision in that case was before this Court for review upon a direct appeal, and entirely ignores the jurisdictional question presented by the

motion to dismiss the case for the want of jurisdiction.

The decision of the Supreme Court of the State proceeded upon the general doctrines of law applicable to the effect to be given to the judgments and decisions of courts of superior jurisdiction, and to the review of their judgments and decrees in collateral proceedings, and did not involve the consideration or determination of a Federal question. Nor did it involve the denial of any right claimed by the plaintiff in error, under any Federal authority, but, on the contrary, sustained the only claim of Federal right that was made in the case, which is the title of the Delta and Pine Land Company acquired through the sale made under the decree rendered by the United States Circuit Court.

It is respectfully submitted to the Court, that the principle announced by decision of the Supreme Court of the State is correct, to the effect that the decision of the United States Circuit Court, on the question of its own jurisdiction in the former proceeding, is conclusive against the parties to that cause, and their privies, until reviewed and reversed on appellate proceedings, and that the correctness of that decision can not be assailed, in a collateral attack, and the decree and proceedings treated as void.

That question is not now before the Court for determination on the motion to dismiss, but in view of the argument of counsel for the plaintiff in error, a brief reply will be submitted.

II.

The decision of the United States Circuit Court, on the question of its own jurisdiction, in the case of Watson v. Evers, is conclusive between the parties to that cause, and their privies, and can not be attacked collaterally.

All of the parties in the case of *Thomas Watson* v. *Evers et al.* were actually before the court. The jurisdictional question, arising under the removal acts of Congress, was raised and presented to the United States Circuit Court, by a motion to remand the cause to the State court. The decision of the United States Circuit Court denying the motion was acquiesced in by all the parties to the cause, and a final decree was rendered, by which the rights of all the parties were determined in accordance with the consent of all of the parties given in open court.

This decree was executed in exact conformity with its terms, by a sale of the lands. Thomas Watson purchased part of the lands and afterwards resold them to the Delta and Pine Land Company, a *bona fide* purchaser, for a valuable consideration.

It is respectfully submitted to the Court, that the decision of the United States Circuit Court, in respect to its own jurisdiction, is conclusive between the parties to the cause, and their privies, except upon a direct appeal, and that the Supreme Court of the State decided correctly in declining, as it did, to review the decision of the Federal court, and to pronounce its decree a nullity.

The Federal court had the right to decide upon the question of its own jurisdiction. This was in itself, and necessarily, the exercise of jurisdiction, and of judicial authority, and, whether its decision is correct or erroneous, it stands as conclusive upon the parties until reversed on direct appellate proceedings.

It was said by the Supreme Court of New York in the case of *King* v. *Poole*, on the precise point, of the conclusiveness of a decision by a superior court on the question of its jurisdiction:

"A court always has jurisdiction of the person of the plaintiff who instituted a suit in its forum, and if the defendant is properly brought in, although he denies the jurisdiction over the subject, yet is also in court. Thus the jurisdiction exists over the parties, and the necessary power to determine the very question of jurisdiction itself enables the tribunal to render a determination of that question which will be valid and binding. A question of jurisdiction is not an incident of the questions upon the merits of the cause, it is in itself a principal question, and may be the principal question in the case."

King *v.* Poole, 36 Barb. N. Y., 242.

The principle is thus stated by the Supreme Court of Virginia, in the case of *Cox* v. *Thomas*, 9 Grattan, 323:

"The only question would seem to be whether the subject-matter was within the jurisdiction of the court; if it was, if the jurisdiction of the court extended over that class of cases, it was the province of the court to determine for itself whether the particular case was one within its jurisdiction.

"Where its jurisdiction is questioned, it must decide the question itself, nor is it bound to set forth in the record the facts upon which its jurisdiction depends."

Cox *v.* Thomas, 9 Grattan, 323.

The Federal courts are invested with jurisdiction in removal causes from the State courts, in which citizens of different States or aliens are parties, and it must therefore be the province of these courts to decide whether a particular case falls within this general class of cases over which they have been given jurisdiction.

Many difficult jurisdictional questions arise under the removal acts of Congress, and intolerable confusion and inconvenience would follow if the decision of a Federal court, in respect to its own jurisdiction, could be treated as void in collateral proceedings, whenever another court entertained a different view of the question of jurisdiction from that held by the Federal court.

The principles of law applicable to, and governing, the precise phase of the jurisdictional question presented by the motion in this case, have been fully settled by the decisions of this Honorable Court.

The general doctrine, broadly stated, is, that judgments and decrees rendered by courts having no jurisdiction of the cause are void. But that general principle has no application whatever to a case where the parties are all properly in court, and where the court expressly adjudicates the question of its jurisdiction. Such a decision of the question of jurisdiction is itself an adjudication of the question by the court, and as such conclusive upon the parties to the suit until reversed on appellate proceedings.

The decisions of courts of superior jurisdiction can not be treated collaterally as nullities which may be totally disregarded.

Chief Justice Marshall, in delivering the opinion of

the Court in *Ex parte Watkins*, 3 Pet., 193, 207, declared that—

"It is universally understood that the judgments of the courts of the United States, although their jurisdiction be not shown in the pleadings, are yet binding on all the world; and this apparent want of jurisdiction can avail the party only on a writ of error."

Ex Parte Watkins, 3 Pet., 193, 207.

The same doctrine is announced in the following cases:

Kemp's Lessee *v.* Kennedy, 5 Cranch, 185;
Kennedy *v.* Georgia State Bank, 8 How., 586;
McCormick *v.* Sullivant, 10 Wheat., 192.

Mr. Justice McLean, in the case of *Grignon's Lessee* v. *Astor*, 2 How., 319, in delivering the opinion of the Court, on the subject of the immunity of the decisions and decrees of courts of superior jurisdiction from collateral attacks, thus stated the doctrine:

"The true line of distinction between courts whose decisions are conclusive, if not removed to an appellate court, and those whose proceedings are nullities if their jurisdiction does not appear on their face, is this: a court which is competent by its constitution to decide on its own jurisdiction, and to exercise it to final judgment, without setting forth in their proceedings the facts and evidence on which it is rendered, whose record is absolute verity, not to be impugned by averment or proof to the contrary, is of the first description; there can be no judicial inspection behind the judgment, save by appellate power. A court which is so constituted that its judgment can be looked through for the facts and evidence which are necessary to sustain it, whose decision is not evidence of itself to show jurisdiction and its lawful exercise, is of the latter description; every requisite for either must appear on the face of their proceedings, or they are nullities."

"The decree is an adjudication upon all the facts necessary to give jurisdiction, and whether they existed or

not is wholly immaterial, as no appeal is taken, the rule is the same whether the law gives an appeal or not; if none is given from the final decree it is conclusive on all whom it concerns. If there is error in it of the most palpable kind, if the court which rendered it have in the exercise of jurisdiction diregarded, misconstrued or disobeyed the plain provisions of the law which gave them power to hear and determine the case before them, the title of the purchaser is as much protected as if the adjudication would stand the test of a writ of error; so when an appeal is given but not taken in the time prescribed by law."

Grignon's Lessee *v.* Astor, 2 How., 319.

The doctrine has been repeatedly declared by this Court, that the Federal courts are courts of superior and not of inferior jurisdiction.

In the case of *Dowell* v. *Applegate*, 152 U. S., 327, the decree of a Federal court in a removal case was held to be void, in a collateral proceeding, by the State court, on the ground that the Federal court did not have jurisdiction. Mr. Justice Harlan, delivering the opinion of the court, said:

"If the Federal court erred in assuming or retaining jurisdiction of the Dowell suit, a question not necessary to be examined, would it follow that its final decree, being immodified and unreversed, can be treated as a nullity when assailed collaterally by one who was a party to the suit in which it was rendered?"

The question of its own jurisdiction "was a question which the Circuit Court of the United States was competent to determine in the first instance. Its determination was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them, or either of them, collaterally, or otherwise than on writ of error or appeal to this court."

Dowell *v.* Applegate, 152 U. S., 327–337.

In the case of *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, 123 U. S., 552–559, the following language from the opinion of the Court was quoted with approval in the opinion delivered by Mr. Justice Harlan in *Dowell* v. *Applegate*, in respect to the collateral assailment of a Federal court decree in a removal cause:

"If the Circuit Court kept the case when it ought to have been remanded, or if it had proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed on appeal, as erroneous, but the decree would not have been a nullity. To determine whether the suit was removable in whole or in part or not, was certainly within the power of the Circuit Court. The decision of that question was the exercise, and the rightful exercise, of jurisdiction, no matter whether in favor of or against taking the cause. Whether its decision was right, in this or any other respect, was to be finally determined by this court on appeal."

Dowell *v.* Applegate, 152 U. S., 327–337;
Des Moines Nav. Co. *v.* Iowa Homestead Co., 123 U. S., 552–559.

It is argued by counsel for the plaintiff in error, in the case now before the Court, that the decisions of this Court in respect to the immunity of the decrees of the Federal courts from collateral attack, applies only to cases where the record simply fails to show jurisdiction, and that it does not apply where the record shows affirmatively the want of jurisdiction.

The same argument precisely was addressed to the Court in the case of *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, above cited, where the record of the proceed-

ings in the Federal court in a removal cause, assailed collaterally in a State court, showed that some of the defendants were citizens of the same State with the plaintiff. And it also appeared, on the face of the record, that some of the defendants did not join in the petition for the removal of the cause from the State court.

To this argument, Chief Justice Waite, delivering the opinion of the Court, said:

> "It is said, however, that these decisions apply only to cases where the record simply fails to show jurisdiction. Here it is claimed that the record shows that there could be no jurisdiction, because it appears affirmatively that the Navigation and Railroad Company, one of the defendants, was a citizen of the same State with the plaintiff. But the record shows, with equal distinctness, that all the parties were actually before the court, and made no objection to its jurisdiction."
>
> Des Moines Nav. Co. *v.* Iowa Homestead Co., 123 U. S., 558, 559.

And then followed the statement of the doctrine, in the opinion of the Court already quoted, that the decision of a Federal court, on the question of its jurisdiction is conclusive upon the parties, except upon review on appeal or writ of error.

The suggestion of counsel for the plaintiff in error, that all of the defendants in the case of *Thomas Watson* v. *Evers et al.*, did not join in the petition for the removal of the cause, has no force whatever.

All of the parties acquiesced in the decision of the United States Circuit Court holding jurisdiction of the cause. This was at most an irregularity in the mode of procedure, and could not have had the effect of render-

ing the decree of the court a nullity, or of subjecting the decision and proceedings of the Federal court to review, collaterally, in the State court.

The suggestions of counsel for the plaintiff in error, that Evers failed to file a transcript of the record in the case of *Thomas Watson* v. *Evers et al.* in the United States Circuit Court, and that the Chancery Court of De Soto County made no order for the removal of the cause, are unworthy of serious attention.

No order of the State court was necessary to the removal of the cause, according to the repeated decisions of this Court.

The transcript of the record was in fact filed by Thomas Watson in the United States Circuit Court, and jurisdiction was formally taken by that court on the denial of the motion to remand the cause to the State court.

The averment in the bill that Goodsell was not a party to the suit in the Federal court, and therefore not bound by the decree and proceedings in that cause, is met by the fact that he purchased from Baldwin, one of the defendants, after the final consent decree had been rendered. He stands therefore in privity with Baldwin, and is not permitted to make any objection to the decree that Baldwin is precluded from making.

It is respectfully submitted that the motion to dismiss the writ of error should be sustained.

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